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Vernon M. Pruitt

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

IN THE MATTER OF:

Vernon M. Pruitt

DOCKET NO: 26.19-098692J

INITIAL ORDER

This matter was heard on February 4, 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”). Vernon M. Pruitt (hereinafter referred to as “Grievant”) was represented by his legal counsel, P. Brocklin Parks.

The issue in this hearing is whether the State carried its burden of proof of preponderance of evidence that Grievant’s conduct warranted his termination from employment with the Department of Safety.

Grievant properly appealed this disciplinary action, and this hearing constituted Grievant’s 5th 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 termination for alleged policy violations is **improper** and his termination should be **reversed**.

This decision is based upon the following:

PROCEDURAL HISTORY

Prior to his termination, Grievant was employed with the Tennessee Highway Patrol for 27 years. He began working with the Department in 1981. At the time of his termination, Grievant was assigned to the CIRT (Critical Incident Response Team). Grievant had been on the CIRT for two and a half years.

On August 22, 2007, after work, Grievant went to a bar, the Hide Away, where he had half of a beer with a friend around 5:30. He also shot pool while there. Grievant left the Hide Away around 6:00 and went to the Cove. Grievant ate dinner there, had two beers and was there until 9:00.

After Grievant left the Cove, he went over to Donnie Joe's. There, he had three beers and a pot of coffee. He had been drinking coffee before leaving Donnie Joe's around 2:30 a.m. on the morning of August 23, 2007. Grievant was headed home and did not consider himself impaired in any way.

Subsequently, Grievant was stopped by Sergeant John West. Sergeant West asked for his driver's license. Sergeant West asked Grievant to get out of his truck and told Grievant that he thought he had been drinking.

FINDINGS OF FACT

1. In the early morning hours of August 23, 2007, as Grievant headed for home, Grievant was stopped by Sergeant John West.
2. Officer West observed a red truck traveling 50 mph in a 40 mph zone. Sergeant West smelled a strong odor of alcohol and asked Grievant to perform a series of sobriety tests. Grievant consented to all tests.

3. Grievant did not have a conversation with Sergeant West about his ability to drive, if he was taking any medications or if he had any physical impairments. Grievant performed the field sobriety tests.
4. Grievant performed the One Legged Stand and did not fall over. Grievant also performed the Walk-and Turn with no problems.
5. Petitioner was later taken to the Millington Police Department headquarters where he was administered a breath alcohol test which registered 0.09 or one-one hundredth (1/100) of a percentage over Tennessee's DUI Per Se law.
6. Grievant was charged with DUI and the case was set in court.
7. **The charge of DUI against Grievant was dismissed by Assistant District Attorney Phil Floyd following his review of the case and conversation with the arresting officers.**
8. **Grievant was ultimately given diversion for Reckless Driving which was also dismissed and Grievant's record was expunged.**
9. At some point following Petitioner's arrest, Criminal Investigations Division Director Frankie Floied recommended Grievant be terminated from the Department.
10. Director Floied's decision that Grievant should be terminated was because "if the circumstances that [he] read [regarding the incident] were correct, the [Petitioner] would not [be an asset to the Department]."
11. The basis for Director Floied's decision was clearly premised on "if the incident still stood as it was presented to us."
12. In making his recommendation that Grievant be terminated, Director Floied was concerned with two (2) fundamental issues regarding this matter.

13. First, Director Floied was concerned with a Trooper who has “been convicted of DUI.” However, Grievant was not “convicted” of DUI. Director Floied apparently had no idea that the DUI charge against Grievant had been dismissed.

14. **It appears that Director Floied based his decision, recommendation and testimony in this matter on the assumption that “the incident still stood as it was presented to us.”** However, the incident **was not** “as it was presented.” The DUI charge against Grievant was dismissed.

15. Second, Director Floied expressed concern for the possibility that a Trooper’s courtroom testimony could be impeached by a “record” or “conviction.”

16. Because **all of the records have been expunged and destroyed**, it is **highly unlikely** that Grievant could be impeached in court as a result of this incident.

17. It doesn’t appear that Director Floied was aware of the actual facts surrounding the incident that gave rise to his recommendation that Petitioner be terminated.

CONCLUSIONS OF 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. As the Petitioner, the Department bears the burden of proof, which is a preponderance of the evidence standard, to show that Grievant’s termination was proper.

ANALYSIS

1. 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 not

proved, by a preponderance of the evidence, that Grievant's conduct warranted his termination from employment with the Department of Safety.

2. Grievant testified that he did not consider himself impaired in any way when he left the restaurant, headed home on August 23, 2007.

3. Grievant performed his sobriety tests with no problems. Grievant was administered a breath alcohol test which registered 0.09 of a percentage over Tennessee's DUI Per Se law. However, the charge of DUI against Petitioner was dismissed, and Grievant was ultimately given diversion for Reckless Driving, which was also dismissed, and Grievant's **record** was **expunged**.

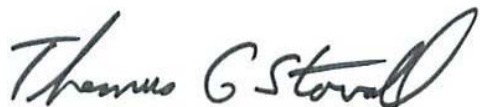
4. Based on the above, it is determined that Grievant's termination for alleged policy violations was **improper**.

5. Therefore, it is **ORDERED** that Grievant's termination of his employment with the Department of the Safety be **REVERSED**.

This Initial Order entered and effective this 14th day of May, 2009.

Joyce Carter-Ball
Administrative Judge

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



Thomas G. Stovall, Director
Administrative Procedures Division

