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

Tennessee Department of State, Opinions from the Administrative Procedures Division

Law

8-14-2009

Corinthia A. Gray

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 CIVIL SERVICE COMMISSION OF THE STATE OF TENNESSEE

IN THE MATTER OF:	
Corinthia A. Gray	**DOCKET NO: 26.05-099089J**

INITIAL ORDER

This matter was heard on August 14, 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. Teresa S. Thomas, Staff Attorney, represented the Tennessee Department of Correction (hereinafter referred to as the "Department"). Corinthia Gray (hereinafter referred to as "Grievant") was represented by her legal counsel, Debra A. Wall.

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

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 her termination should be **reversed.**

This decision is based upon the following:

PROCEDURAL HISTORY

Prior to her termination on December 18, 2006, Grievant had been employed at Riverbend Maximum Security Institution for 17 years. Grievant held the position of Corporal for 15 years. Grievant's position is considered security-sensitive and is subject to a random drug test. Grievant refused to submit to a random drug test on December 11, 2006.

On December 11, 2006, Grievant was notified by Captain Ron Wright to report to the Training Room of Building 7 to see Ms. Kathy Strickland in Human Resources. Upon arriving at the Training Room, Ms. Strickland advised Grievant that her name was on the random drug test list for December 2006. Ms. Strickland advised Grievant of the need to submit a urine sample at that time. Ms. Strickland informed Grievant that the refusal would subject her to disciplinary action. Grievant left the facility without taking the drug test on December 11, 2006.

FINDINGS OF FACT

1. The intent of the Tennessee Drug-Free Workplace Program is to promote drug-free workplaces.

2. On December 11, 2006, the first day of Random Drug Testing at Riverbend, Grievant was subject to random testing.

3. On December 11, 2006, Captain Wright called Grievant and informed her that Kathy Strickland, the Human Resources Director, wanted to see Grievant.

4. Captain Wright didn't say what Ms. Strickland wanted, or when Ms. Strickland wanted to see Grievant. Grievant works in the control room and has to be relieved by another employee before leaving her post.

5. When Grievant got off from work, she went to look for Ms. Strickland to tell her that she (Grievant) couldn't stay after work.

6. When Grievant found Ms. Strickland, Ms. Strickland told Grievant that she had been randomly selected for a drug test.

7. Grievant asked Ms. Strickland if the testing was to be done "right now," and Ms. Strickland responded, "yes."

8. Grievant told Ms. Strickland that she had just used the bathroom, and that she had to go and couldn't stay because she (Grievant) is her sister's caregiver and her sister had an operation on her right eye. Grievant had planned to meet her sister as soon as she (Grievant) got off from work because they were trying to do a procedure on her sister's left eye, and Grievant did not want her sister to have to sit, blind, without knowing what was going on. Grievant wanted to talk with her sister's doctor.

9. Grievant asked if she could go to get her sister and bring her back to work, or if she could use the telephone. This was not an option for Grievant.

10. Grievant **learned that she had been selected for the drug test after she was already off duty.** No one informed Grievant that she was to report **immediately** to the training room to be tested for drugs during the eight (8) hours that she was on duty.

11. Grievant was not told when and where she was to report to be drug tested, or why Ms. Strickland wanted to see her.

12. Grievant worked her eight (8) hour shift that day and was relieved by second shift. Grievant was **not notified** that she was to report **immediately** for drug testing **during** her shift. Grievant was **not allowed** to come back to work another day.

13. This was the first day that the Drug Free Workforce Policy was implemented at Riverbend. Apparently there was some confusion about the procedure for testing employees.

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 termination was proper.

3. The **Drug Free Workplace Policy** provides:

> VI. N. (2) On a schedule established by the Department and using the list of TDOC employees in security-sensitive positions supplied by TDOC Human Resources, the Department's Employee Drug Testing Contractor will notify the appropriate Warden or Superintendent/designee for facilities that an employee has been randomly selected for drug testing. The Warden or Superintendent/designee shall notify the employee that he/she has been randomly selected for a drug test and direct the employee to **immediately** report to the designated test site to provide a specimen. Notification to the employee shall occur during the **employee's current shift** or, if the employee is not on duty at the time, during the **next shift the employee works**. Testing shall occur during the period the employee is scheduled to work, and as soon as practicable after the employee is notified of his/her selection.

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 not proved, by a preponderance of the evidence, that Grievant's conduct warranted her termination from employment with the Department of Correction.

Grievant was terminated because of her alleged failure to follow the Drug Free Workplace Policy.

Ms. Strickland was not available to testify. The Department did not provide proof as to the **exact time** that Grievant was notified that she was to be tested for drugs. The Drug Free Workplace Policy provides that notification to an employee **shall** occur during the employee's current shift, **or** if the employee is not on duty at the time, during the **next shift** the employee works. This was not done.

The Drug Free Workplace Policy provides that testing shall occur during the period the employee is scheduled to work, and as soon as practicable after the employee is notified of selection. This was not done.

CONCLUSIONS OF LAW

1. It is **concluded** that the Department did not follow the Drug Free Workplace Policy.

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

3. Therefore, it is **ORDERED** that Grievant's termination of her employment with the Department of the Correction be **REVERSED.**

4. It is further **ORDERED** that Grievant be **reinstated** as an employee with full back pay and benefits, attorney fees and costs.

This Initial Order entered and effective this 30th day of October, 2009.

_____
Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 30th day of October, 2009.

_____
Thomas G. Stovall, Director
Administrative Procedures Division