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5-11-2010

## Civil Service Commission vs. James Aytes

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

**IN THE MATTER OF:**

**James Aytes**

**DOCKET NO: 26.05-103843J**

**INITIAL ORDER**

This matter was heard on May 11, 2010, in Wartburg, 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. Bryce Coatney, Staff Attorney for Department of Correction (hereinafter referred to as the (“Department”)) represented the State. James Aytes (hereinafter referred to as “Grievant”) represented himself.

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 Correction.

Grievant properly appealed this disciplinary action, and this hearing constituted Grievant’s 5<sup>th</sup> 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 policy violations is **proper** and is **UPHELD**.

This decision is based upon the following:

## **PROCEDURAL HISTORY**

Prior to his termination, Grievant had been employed at Morgan County Correctional Complex as a Correctional Officer. On July 31, 2008, James VanHoy, an inmate of the old Brushy Mountain Prison, where Grievant worked at that time, was seriously assaulted by other inmates of that unit. Grievant was assigned to that unit on the evening of July 31, 2008.

Grievant and his co-worker, Mr. Hamby, allegedly had sufficient information to give them notice at least to inquire as to the possibility of such an incident, or at least the risk of that happening. Shortly after receiving such information, which should have given Grievant notice, the assault occurred.

When Inmate VanHoy came to Grievant and Mr. Hamby for assistance, they dismissed him from their presence before summoning personnel to the scene to attend to Mr. VanHoy, and to investigate what may have happened.

## **FINDINGS OF FACT**

1. Michael Allison, Special Agent of the Internal Affairs Division of the Department of Correction, has been with the Department for 21 ½ years and served in various positions. Mr. Allison investigated the incident that happened on July 31, 2008.
2. Mr. Allison received a telephone call from Warden Jim Worthington on July 31, 2008. Mr. Worthington explained that Inmate VanHoy had been seriously assaulted and that he was being transferred to the University of Tennessee Medical Center.
3. Mr. Allison received two handwritten statements, one from Mr. Aytes and one from Mr. Hamby. The statements indicated that Inmate VanHoy came to the unit office where Mr. Aytes and Mr. Hamby were working. He had clearly been assaulted and had blood all over him. Instead of these officers protecting him, Inmate VanHoy was instructed to get out of the office.

4. Inmate VanHoy came to Grievant and Mr. Hamby for assistance, and **they put him right back in harm's way**; they rendered no aid at all.
5. Inmate VanHoy went back out in the common area where his assailants were still present, walked outside the building and collapsed.
6. Grievant failed to protect Inmate VanHoy, when Inmate VanHoy came to the office to seek protection, and he failed to render aid to Inmate VanHoy.
7. A Correctional Officer takes an oath of office that they will protect inmates, they will help inmates out when the need arises and they will not refuse to aid an inmate who comes to them, or needs aid.
8. During the assault, Inmate VanHoy yelled and screamed at the top of his lungs for approximately two to three minutes while he was severely beaten, kicked and punched about the head and face areas in the hallway.
9. Inmate VanHoy was assaulted at nighttime during the count, when it's typically quiet and inmates are retiring for the day. It is **reasonable to think that Grievant and Mr. Hamby should have heard the yelling because the assault took place in a small area in the hallway.**
10. John Fisher, Special Agent in Charge of Internal Affairs for the Middle Tennessee Region for the Department of Correction, determined, after his investigation, that Grievant had prior knowledge that the assault would happen on July 31, 2008, and that he didn't do anything to prevent it.
11. Inmate Sellers, prior to this incident, asked Grievant questions about what would happen if somebody got assaulted, sexually assaulted, and what he (Inmate Sellers) could do to protect himself from showing evidence of injury in connection with such assault.

12. The fact that an inmate came into Grievant's presence and asked questions about a prospective fight, an inappropriate conversation in and of itself, should have **alerted** Grievant that it was **very possible that there could be an inmate-on-inmate assault**, and that he needed to take **immediate action to secure the situation**. A **reasonable** person should have known that something was wrong, or about to happen.
13. Instead, Grievant gave one of the **accused assailants** trash bags, which had been described to him as one method in which he (the accused assailant) might protect himself from having evidence of injuries if he were in a fight.
14. Grievant never bothered to call for assistance or try to help Inmate VanHoy as he yelled and screamed during the assault; to protect him from further harm or to render any first aid that Inmate VanHoy might have needed.
15. Department of Correction employees are supposed to **treat each inmate in a fair and impartial manner**, not favor one over the other.
16. The **injuries** that Inmate VanHoy received during this assault may be **long term**.

#### **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. Grievant's behavior violates **TDOC policy 302.08, Code of Conduct and Oath of a Correction Department Employee:**

“I do solemnly swear or affirm that I will fully and faithfully, impartially and diligently perform all the duties required of me as an employee of the Department of Correction. I will execute the laws and regulations described governing said agency or institution so far as it concerns my office. I will accept no bribe or other compensation during my tenure in office, or other such compensation allowed by law. And I will **on no occasion ill treat or refuse** any offender under my care beyond punishment ordered by the law and the regulations of the institution.

“Employees shall not abuse an inmate. Any inmate who assaults or strikes an inmate subjects inmate to improper punishment prior to inmate benefits over the established disciplinary procedure, may be charged with abuse of the inmate.”

4. Grievant’s behavior violates **Human Resources Rules and Regulation 1120-10-.06:**
  - (2) Negligence in the performance of duties.
  - (8) Gross misconduct or conduct unbecoming an employee in the State service.
  - (15) Acts that would endanger the lives and property of others.

### **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 proved, by a preponderance of the evidence, that Grievant’s conduct warranted his termination from employment with the Department of Correction.

The fact that an inmate came into Grievant’s presence and asked questions about a prospective fight, an inappropriate conversation in and of itself, should have **alerted** Grievant that it was **very possible that there could be an inmate-on-inmate assault**, and that he needed to take **immediate action to secure the situation**. A **reasonable** person should have known that something was wrong, or about to happen.

Grievant’s behavior and response to the incident on July 31, 2008 are not consistent with the expectations set forth for officers responsible for the safety and security of inmates under their supervision.

Grievant presented no mitigating testimony or extenuating circumstances to dispute the testimony presented by the State's witnesses.

### **CONCLUSIONS OF LAW**

1. It is **concluded** that the Department has met its burden of proof that Grievant violated the Department's **Code of Conduct and Oath of a Correction Department Employee, and the Department of Human Resources Rules and Regulations 1120-10-.06: (2), (8) and (15)**.
2. It is determined that Grievant's conduct and performance were not consistent with the expectations set forth for officers responsible for the safety and security of inmates under their supervision.
3. Based on the above, it is determined that the termination of Grievant's employment with the Department was **proper**.
4. Therefore, it is **ORDERED** that Grievant's termination of his employment with the Department of the Correction be **UPHELD**.

**IT IS SO ORDERED.**

This Initial Order entered and effective this 30th day of June, 2010.

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Joyce Carter-Ball  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 30th day of June, 2010.



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Thomas G. Stovall, Director  
Administrative Procedures Division