



6-16-2010

DEPARTMENT OF ENVIRONMENT &
CONSERVATION, Petitioner, vs. STANLEY
PATTERSON, 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

FINDINGS OF FACT

1. The Grievant is a Clerk III and has been employed by the Department in the Division of Water Pollution Control (Division) for 11 years.

2. Prior to August 2009, the Grievant worked with the engineers in the plans review section. The Grievant had a history of not getting along with some of his co-workers and was disrespectful to some of the engineers in the plans review section. The Grievant actually physically struck one of the engineers while on the elevator in March 2008. The Grievant's conduct ultimately led to a three (3) day suspension for conduct unbecoming a state employee and failure to maintain harmonious working relations with his co-workers. The period of suspension was August 4-6, 2009.

3. Garland Wiggins, Deputy Director of the Division, decided during the course of the Grievant's suspension that he needed to be reassigned for the good of the Division. Mr. Wiggins did not want the Grievant to continue working in the plans review section and the Grievant's immediate supervisor had asked that he be transferred to another position. Consequently, upon returning to work from his suspension the Grievant's job assignment and work station were changed. The Grievant became the Division receptionist. In this position he is the Division's first contact with visitors and the public. In addition to directing visitors and telephone calls, he oversees the file room, the copy and fax machines, and receives the mail. This change in the Grievant's duties and work station was done without a change in job classification or reduction in salary. The previous receptionist was reassigned to the Grievant's old position. This reassignment was done without a change in that individual's classification or salary.

4. The Grievant contended that his new position is viewed as an entry level position and is less prestigious than his previous position. The Grievant believes that he was demoted without receiving minimum due process and that he was in effect punished twice for the same offense.

RELEVANT LEGAL AUTHORITY

1. **Department of Human Resources Rule 1120-10-.03 Minimum Due Process**

(1) Career employees have a “property right” to a position in the classification in which they currently hold career status. Therefore, no suspension, demotion, dismissal or any other action which deprives a regular (career) employee of his “property right” will become effective until minimum due process is provided...

2. **Department of Human Resources Rule 1120-1-.01 Definitions**

(22) *Demotion.* The reclassification of an employee to a position of lower salary rank as a result of poor performance or unsatisfactory conduct.

3. **Department of Human Resources Rule 1120-11-.07 Grievable Matters**

(1) Disciplinary suspension or demotion

4. **Department of Human Resources Rule 1120-11-.08 Exceptions And Non-Grievable Matters**

(9) Shift, post and overtime assignments

CONCLUSIONS OF LAW

1. The Department has carried its burden of proof by a preponderance of the evidence that the changing of the Grievant’s work station and job assignment was not a demotion that is grievable under the rules nor was the Department required to provide

him with minimum due process prior to the reassignment. Accordingly, the grievance should be **DISMISSED**.

2. The Grievant's job reassignment was done without a reduction in salary or change in classification and is not a "demotion" as defined by Rule 1120-1-.01(22). It is not a grievable matter pursuant to Rule 1120-11-.07(1) and he is not entitled to minimum due process under Rule 1120-10-.03(1). The Grievant's reassignment should be likened to a "shift, post or overtime assignment" which is specifically made non-grievable pursuant to Rule 1120-11-.08(9). The fact that the Grievant perceived his new assignment to be less prestigious than his previous job does not make the reassignment grievable under the rules.

3. The "punishment" for the Grievant's misconduct was the three (3) day suspension which the Grievant declined to contest at the hearing. The change in his job assignment was not added punishment but rather was an attempt to remove the disruptive force from the Division's plans review section that the Grievant's presence created.

4. Based upon the foregoing, it is hereby **ORDERED** that as the change in the Grievant's job assignment was not a demotion and is therefore not grievable under the rules, the grievance is hereby **DISMISSED**.

This Initial Order entered and effective this 9th day of September, 2010.

Thomas G. Stovall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 9th day of September, 2010.

Thomas G. Stovall, Director
Administrative Procedures Division