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5-15-2012

Dept. Of Finance and Administration, Petitioner
Vs. Torrance Randle, Grievant.

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:

**Dept. Of Finance and Administration,
Petitioner,**

DOCKET NO: 26.09-116563J

Vs.

**Torrance Randle,
Grievant.**

INITIAL ORDER

This matter came for consideration before Steve R. Darnell, Administrative Law Judge, sitting for the Tennessee Civil Service Commission (Commission). For consideration is the Department of Finance and Administration's (Department) motion to dismiss Grievant's claim because it is not grievable. The Department is represented by attorney Mark Cherpack. Grievant, Torrance Randle, is not represented by counsel. The Department filed its motion to dismiss on May 2, 2012. An order was entered May 4, 2012 allowing Grievant until June 4, 2012 to make his response. Grievant responded in opposition to the Department's motion via e-mail on May 6, 2012. The Department filed a reply to Grievant's response on May 9, 2012. This matter is ready for disposition.

The Department seeks dismissal of Grievant's action asserting the issues raised by Grievant are not grievable before the Commission. Department of Human Resources Rule 1120-11-.07 identifies the following matters as non-grievable:

- (1) Actions that affect employees who are not career or permanent employees;
- (2) Actions that affect employees who are not covered under T.C.A. §41-22-407 (d)(3);
- (3) Actions that affect an employee serving an initial probationary period;
- (4) Normal supervisory counseling and management;

- (5) Non-selection for promotion when the appointment was in compliance with these Rules and the Act;
- (6) Oral and written reprimands.
- (7) Performance evaluation ratings;
- (8) Actions resulting from suggestions adopted by the State Employee Suggestion Award Board;
- (9) Actions resulting from reductions in force when the actions by the appointing authority were in compliance with statutes and rules;
- (10) Shift, post, and overtime assignments;
- (11) Reasonable work assignments outside those normally associated with the employee's assigned job classification;
- (12) Salary range assigned to classification;
- (13) Administration of salary increase established and funded by the legislature;
- (14) Classification of position;
- (15) Denial of leave requests except as provided for in T.C.A. §8-50-110 and T.C.A. §8-50-802.
- (16) Matters relating to internal agency or program management based on discretionary decision making;**
- (17) Demotions during subsequent probation when the demotion is to the job classification the employee held prior to the promotion and at a salary rate no lower than the salary rate had the promotion not occurred;
- (18) Agency rules or policies which do not conflict with statutes, rules, or policies of the Department of Human Resources; and
- (19) Any other matter over which an appointing authority or the Commission has no control or jurisdiction or is without the authority to grant requested relief.
(emphasis added)

Grievant asserts in his original claim and in response to the Department's motion to dismiss that he is not assigned difficult job duties or supervisory duties as was represented to him when he accepted the position of Accountant 3. He further alleges there was an element of fraud on behalf of the Department's personnel inducing him to accept the Accountant 3 position.

Pursuant to Rule 1120-11-.07(16), "matters relating to internal agency or program management based on discretionally decision making" are not grievable before the Commission. Therefore, the Commission has no legal authority to hear such claims. The level of difficulty of the work assigned to Grievant and whether he is assigned supervisory duties is clearly a discretionary management decision by the Department. As such, Grievant's complaints are not

grievable before the Commission. The Department's motion to dismiss is proper and must be granted.

IT IS THEREFORE ORDERED that Grievant's claim is dismissed and the file at APD shall be closed.

This Order entered and effective this 15 day of May, 2012

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 15 day of May, 2012



Thomas G. Stovall, Director
Administrative Procedures Division