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MABLE OSEMWEGIE, Grievant

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**BEFORE THE METROPOLITAN
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:)	
)	
MABLE OSEMWEGIE,)	DOCKET NO. 43.02-114438J
Grievant)	
)	
)	

ORDER

This matter came to be heard on April 17, 2012, before Marion P. Wall, Administrative Judge, Administrative Procedures Division, Office of the Secretary of State, sitting for the Metropolitan Government of Nashville and Davidson County. The Metropolitan Government of Nashville and Davidson County (Metro) was represented by Ms. Jenny Howard. The Grievant, Ms. Mable Osemwegie, represented herself.

This issue in this case is Grievant's appeal of the denial of her request to have her absence from work between June 5, 2011, and July 18, 2011, deemed due to an injury on duty, and thus not chargeable to her accumulated sick or annual leave balances.

After consideration of the entire record and the arguments of counsel, it is concluded that the Grievant did not comply with the regulations governing injuries on duty, specifically the requirement that the injury be reported within ten days of its occurrence. As a result, her injuries, as far as leave balances and limited duty assignments (and most specifically NOT for any matters involving worker's compensation) cannot be deemed injuries occurring on duty. Therefore, the denial of the Ms. Osemwegie's grievance should be **UPHELD**.

This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Grievant, Mable Osemwegie, has been an employee of the Police Department for many years. There is no dispute as to her performance of her duties or any other disciplinary matter. This controversy only concerns whether an injury will be deemed as occurring on duty for purposes, in which case Grievant's absences after the injury would not be charged against her leave balances¹.

2. Grievant has previously suffered an on duty injury. She had been given an injection for Hepatitis B in September of 1992. She had an allergic reaction to this injection which caused a connective tissue disease. The resultant disease has caused her trouble, such as myalgias, fatigue, and inflammation, ever since.

3. On May 2, 2011, Grievant participated in a physical fitness test for police officers. Part of this test involved jogging or walking 1 ½ miles. When she finished this part of the test, she notified Sgt. M. L. Puckett. Under the circumstances, Sgt. Puckett was the appropriate person to notify. Sgt. Puckett immediately wanted to fill out Form 101, the form for reporting on duty injuries. Grievant, however, was not sure her injury was at all serious; it might have been merely soreness due to the exertion, the sort of thing that would go away in a day or two.

¹ Grievant's medical bills are being paid as an on-duty injury, pursuant to worker compensation laws. This case concerns whether Grievant complied with the mandated procedures regarding reporting of injuries as a prerequisite to having the days off not count against her leave balances.

4. Grievant did not report this injury by filing Form 101 until May 31, 2012. She filled out the form, asserting a muscle strain on both shins, and also stating she had received no medical treatment for this injury². She had Sgt. Puckett sign it. Sgt. Puckett noted that she had been informed of the possible injury on the date of the occurrence. Sgt. Puckett wrote, “She notified me they were bothering her but did not want a 101 at that time thinking that it would get better after a few days. She notified me this morning that she would require a 101 because her shins still bother her.” The Form 101 was reviewed on June 1, 2011, the next day, by the Safety Coordinator, Lt. Watkins, who denied the claim.

4. Between the date of injury and the filing of the form, that is, between May 2 and May 31, Grievant worked some 208 ½ hours.

5. After the claim was denied, Grievant was seen by medical professionals for foot pain and ankle pain. She was diagnosed as suffering from mixed connective tissue disease with features of lupus, complex regional pain syndrome/RSD. The doctor was of the opinion that this injury represented a flare up of Grievant’s previous injury and its sequelae. Thus, it seems more likely than not that this injury is related to, and an aggravation of, the prior on duty injury suffered by the Grievant as a result of the reaction to the Hepatitis B injection and the resulting connective tissue disease. Grievant’s doctor, while indicating that he could not conclusively say, stated that this diagnosis was consistent with or a natural progression of the previous injury. Physical therapy and medications were prescribed. Her injury was treated as an on duty injury for purposes of

² It is not clear exactly who filled out the “muscle strain” and no treatment parts of the form, but Grievant signed it.

worker compensation, but denied on duty status as far as leave was concerned for failure to properly file Form 101.

6. Grievant subsequently received due process in her grievance, ending in this contested case. The decision of the Chief at the lower level was not to attribute Grievant's time off, from June 5, 2011, until July 18, 2011 to an on duty injury; rather, Grievant's time off was charged to her sick and/or annual leave balances.

CONCLUSIONS OF LAW

1. Grievant has the burden of proof, by a preponderance of the evidence, inasmuch as she seeks to change the status quo. Even were this allocation of the burden of proof the other way, it would make no difference. The facts are relatively undisputed, and the issue is one of regulatory construction, not what happened.

2. General Order 99-11 sets forth the procedures to be followed in cases of on duty injuries. It provides that it is the duty of the supervisor to fill out Form 101 as soon as possible after an injury (General Order 99-11(B)). In this case, the supervisor was Sgt. Puckett.

3. Section 4.8 of the Civil Service Rules governing Metro relates to "In line of duty injury leave." This section provides that an injured employee or his representative shall, immediately upon the occurrence of an injury, even if medical attention is not needed, give written notice of the injury to his supervisor. If an injury is not realized upon occurrence, written notice must be given the next working day after realization and within ten days after the occurrence of the injury. (§4.8(2)) The following section sets

forth the procedures to determine whether injury leave (which is not charged to the individual's annual or sick leave balances) should be granted. It provides in pertinent part that injury leave should not be granted "if written notice is not given within ten working days of the accident unless it can be shown that the supervisor had actual knowledge of the accident."

4. It is quite clear that written notice of the injury was not given within ten days, therefore injury leave must be denied unless it can be shown that the supervisor had actual knowledge of the injury. In this case, Sgt. Puckett was notified that Grievant had sore shins, but that she did not wish to file a "101." In other words, Sgt. Puckett was told that Grievant had not suffered any significant injury, or, at least, that she would be told later if she was. She was not told within ten days.

5. Therefore, under the plain meaning of the Civil Service Rules, it was incumbent on the Grievant to notify Sgt. Puckett that she had sustained an on duty injury within ten days of its occurrence. Had she requested that Sgt. Puckett fill out a Form 101 at anytime during that ten day period, then her leave could be considered in line of duty leave, for which her balances would not be charged, regardless of whether Sgt. Puckett actually filled out, or filed, the Form 101 during the ten days subsequent to the injury. As it was, however, Sgt. Puckett was not informed of any on duty injury of any consequence until some thirty days had elapsed, long past the time set by the regulations.

6. It would seem likely that this regulation is to allow Metro to keep track of what is, and is not, injured on duty leave by providing early notice and an opportunity to investigate to determine whether the injury is real, and whether it occurred in the line of

duty. It would prevent occurrences such as the present, where there is some dispute, given the amount of time she worked between the injury and the reporting of the injury, as to whether the cause of her missing work was, in fact, the earlier injury. At any rate, the rule provides that injured on duty leave is not to be given where there is more than ten days lapse between the injury and its reporting by Form 101. This is not to say that the Grievant did not suffer an injury on the date she said, or even that her missing work was related to that injury and the effect it had on her previous, pre-existing on duty injury; rather, the Rules prevent her work absences being charged to injured on duty leave, as opposed to her sick and annual leave balances.

7. Therefore, after consideration of the record as a whole, it is determined that the denial of the Ms. Osemwegie's grievance should be **UPHELD**.

This Initial Order entered and effective this 18 day of May, 2012

Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 18 day of May, 2012

Thomas G. Stovall, Director
Administrative Procedures Division