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3-23-2012

TENNESSEE DEPARTMENT OF SAFETY,  
Respondent, vs. DONALD TABB, Grievant

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**BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION**

<b>TENNESSEE DEPARTMENT OF SAFETY,</b>	)	
	)	
<b>Respondent,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 26.19-114896J</b>
	)	
<b>DONALD TABB,</b>	)	
<b>Grievant.</b>	)	

**INITIAL ORDER**

This contested case came to be heard on March 23, 2012, in Nashville, Tennessee before Administrative Judge Rob Wilson, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Civil Service Commission of Tennessee. Ms. Deborah Martin, Attorney for the Department of Safety, represented the Department of Safety or the State. The Grievant, Mr. Donald Tabb, was present and proceeded on his own behalf.

The subject of this hearing was Grievant’s appeal of a one day suspension without pay. Grievant was given this one (1) day suspension for allegedly violating Rule 1120-10-.05 of the *Rules of the Tennessee Department of Personnel*: (11) Conduct unbecoming an employee in State service. Grievant is also charged with violating certain *General Orders of the Department of Safety*. Specifically, Grievant is charged with violating *General Orders* 216-1, IX, B, 4 (a): Unbecoming Conduct. Employees shall conduct themselves at all times, on or off duty, in a manner as to reflect most favorably upon themselves and/or the Department.

After consideration of the testimony and evidence presented, the arguments of the parties, and the entire record in this matter, it is determined that the Petitioner Department of Safety met its burden of proof, by a preponderance of the evidence, that Grievant violated Rule 1120-10-.06 of the *Rules of the Tennessee Department of Personnel* : (11) Conduct unbecoming an employee in the State service; and further violated the following *General Orders of the Department of Safety*: 216-1, IX, B, 4 (a): Unbecoming Conduct. Employees shall conduct themselves at all times, on or off duty, in a manner as to reflect most favorably upon themselves and/or the Department. Considering all the facts and circumstances of this case, it is ORDERED that a one day suspension without pay is reasonable and must be **AFFIRMED**.

#### **FINDINGS OF FACT**

1. The Department of Safety investigated a civilian complaint against Trooper Donald Tabb. On April 5, 2011, Trooper Tabb and his family attended a soccer game at the Macon Road Baptist Church.

2. At some point during the game a juvenile female began heckling the team and Trooper Tabb's wife was offended by the heckling. The juvenile female further offended Grievant's wife by gesturing and commenting directly to her.

3. Trooper Tabb and his wife decided to inform the Macon Road Baptist Church staff of the juvenile female's behavior. Trooper Tabb and his wife informed Mr. John Leone, a member of the church's staff who they had seen the juvenile female talking to.

4. Trooper Tabb asked for the juvenile female's name and Mr. Leone refused.

5. Another member of the staff, Mr. Kevin Powers, the music minister, became involved. Upon hearing Mr. Powers speak, Trooper Tabb stated, referring to Mr. Powers, “Is this guy tinker bell or what?”

6. Mr. Daniel Webb, who is the operations manager at the church and the complainant in this matter, became involved. Mr. Webb told Trooper Tabb to leave the premises. Trooper Tabb refused to leave and Mr. Webb called the Memphis Police Department.

7. After talking to the police, Trooper Tabb went to his car in the parking lot and stayed there until the game was over.

8. During the confrontation with Mr. Leone and Mr. Webb, Grievant identified himself as a police officer.

### **CONCLUSIONS OF LAW**

1. The Department of Safety bears the burden of proof in this matter to show that Grievant Tabb violated the Department of Human Resources Rules, and/or the Department of Safety’s written rules, policies or procedures. The Department of Safety also has the burden of proof to show that the discipline imposed was the appropriate discipline for any violation of such rules.

2. As defined by the *Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies*, Rule 1360-4-1-.02(7), “preponderance of the evidence” means the greater weight of evidence, or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.

3. It is apparent that Grievant was offended by the language and gestures used by the female juvenile. Understandably, Grievant wanted to protect his wife and family. However, it is also apparent that Grievant had no business identifying himself as a police officer when he was attending his child's soccer game, and he showed poor judgment by asking for the female juvenile's name and then refusing to leave the premises when asked to do so. Furthermore, asking a member of the church staff if they are Tinker Bell is unacceptable behavior for a Tennessee State Trooper, regardless of whether or not they are on duty.

4. Grievant's decision to get into a verbal confrontation with church staff, particularly after identifying himself as a police officer, was an extremely poor decision. Grievant's refusal to leave the premises reflected unfavorably upon the Tennessee Highway Patrol and the Department of Safety.

5. Department of Safety, *General Order* 216-1, IX, B, 4 (a) states that employees shall conduct themselves at all times, on or off duty, in a manner as to reflect most favorably upon themselves and/or the Department.

6. The evidence preponderates that Grievant was guilty of poor judgment by engaging in a confrontation with the staff at Macon Road Baptist Church.

7. It is noted that law enforcement officers, including police officers and state troopers, are expected to have a higher standard of personal conduct than that of the average public or governmental employee. Lee v. Personnel Merit Bd. of City of Dyersburg, 1986 WL 3368, p. 5 (Tenn.Ct. App.); Watts V. Civil Service Board for Columbia, 606 S.W. 2d 274, 282 (Tenn. 1980.) Such officers are expected to maintain

law and order in our society. The Lee court stated: “[The officer] represents law and order to the people and must present an image of personal morality and honesty to have the respect of the citizenry.”

8. For this reason, misconduct by a state trooper or law enforcement officer cannot be taken lightly.

9. A police officer is not above the law or the management decision of an establishment where he is a visitor. Grievant admitted that he should have left the premises when asked by management and that he should not have made the derogatory comment about Mr. Powers.

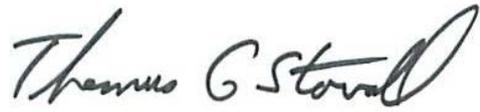
10. The Department’s General Order, cited above, makes it clear that Grievant’s conduct while off duty is subject to disciplinary action. The confrontation was caused solely by Grievant and reflected poorly upon him as a Trooper.

11. The Department has met its burden by a preponderance of the evidence that Grievant violated certain Department of Human Resources Rules and Department General Orders as listed above.

12. Considering all the facts and circumstances in this matter, the Department’s decision is **UPHELD and THE DISCIPLINE IMPOSED IS A SUSPENSION OF ONE DAY WITHOUT PAY.**

It is so ordered.

Entered and effective this 2 day of July, 2012

Handwritten signature of Thomas G. Stovall in black ink.

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Thomas G. Stovall, Director  
Administrative Procedures Division