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Teresa Salmon

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BEFORE THE CIVIL SERVICE COMMISSION OF THE STATE OF TENNESSEE

IN THE MATTER OF:

Teresa Salmon	**)**	
	)	
	)	
	)	**Docket No. 26.05-116362J**
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	)	
	)	

INITIAL ORDER

This matter was heard on September 5, 2012, in Nashville, Tennessee, before Anthony Adgent, Administrative Law Judge, assigned by the Secretary of State to sit for the Civil Service Commission of the State of Tennessee. Amanda Lewis, Staff Attorney for the Department of Correction (hereinafter referred to as the "Department") represented the State. Teresa Salmon (hereinafter referred to as "Grievant") was not present.

The issue in this hearing is whether the State carried its burden of proof of preponderance of evidence that Grievant's conduct warranted her termination from employment with the Department of Correction.

Grievant properly appealed this disciplinary action, and this hearing constituted Grievant's 5th step hearing before the Civil Service Commission.

After consideration of all the evidence, it is determined that the Grievant's termination for policy violations is **proper** and is **UPHELD.**

This decision is based upon the following:

PROCEDURAL HISTORY

Prior to her termination, Grievant had been employed at Northwest Correctional Complex (hereinafter referred to as "NWCX"). This facility houses male inmates of varying classifications and seriousness of their offenses. NWCX has an operating capacity of two thousand three hundred and seventy-seven beds (2,377). Grievant held the position of Laundry Manager 1. In this position, she was responsible for the supervision of five to eight inmates during her shift.

This case came to light during a staff search at NWCX on October 25, 2011. The Grievant attempted to smuggle contraband into the facility. The Grievant was given due process and received a suspension of nine (9) days. The Grievant appealed the suspension. After a Level Four hearing, Commissioner Derrick Schofield terminated the employment of the Grievant. It was found that the Grievant violated both Departmental and NWCX policies and post orders.

FINDINGS OF FACT

1. During the Level 5 hearing, Inmate Relations Coordinator (hereinafter referred to as "IRC Gifford") Dawn Gifford testified on October 25, 2011 a search was conducted on all employees at NWCX.

2. IRC Gifford testified during the search she felt something suspicious in the seat of the Grievant's pants. The Grievant responded it was a pad in her underwear she wore because she peed sometimes when she coughed.

3. IRC Gifford asked the Grievant to accompany her to the locker room area so the search could be completed. While completing the search, Grievant admitted she had

cigarettes hidden in her underwear and she knew that she would get caught sooner or later.

4. When the Grievant and IRC Gifford entered the stall area of the locker room, Grievant reached into her pants and pulled out the contraband from her pants, threw it in the toilet, and attempted to flush it. An altercation ensued between Grievant and IRC Gifford in which IRC Gifford was able to retrieve the contraband from the toilet.

5. Corporal Bambi Spillers testified she witnessed the altercation between IRC Gifford and the Grievant. She testified she saw the Grievant attempting to flush something down the toilet. She also testified IRC Gifford retrieved an object from the toilet, which she later learned were cigarettes.

6. Warden Henry Steward testified Grievant was given Due Process. He testified while he was not at the facility on October 25, 2011, he was made aware of the situation by Deputy Warden Brenda Jones. On October 28, 2011, the Grievant attended a due process hearing at the facility which was conducted by Deputy Warden Brenda Jones. At the conclusion of the hearing, it was decided Grievant would be given a nine (9) day suspension.

7. Grievant requested a Level Four hearing which was conducted on January 20, 2012. After reviewing the evidence presented, Commissioner Derrick Schofield terminated the employment of the Grievant on March 12, 2012 for violation of Department and NWCX policies.

8. Warden Steward testified in regards to the discrepancy in the initial discipline given and the termination. Warden Steward testified the Grievant's integrity as an employee had been compromised and there was no chance of rehabilitation. Warden

Steward stated that while the Grievant stated the contraband was for personal use, given her position, there is no way she could have been using the contraband without giving some to the inmates so they would not tell on her.

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 actions violated Department Policy and Procedure 112.11 *Smoke-Free Policy (Institutions and Academy)*, section V: "Possession and use of tobacco products, tobacco-related products, and tobacco substitutes are prohibited within all TDOC and/or State of Tennessee buildings, vehicles, and property under TDOC control. Section VI, Procedures: "TDOC and, TRICOR employees, inmates, volunteers, and visitors are prohibited from the possession, use, selling, trading, or bartering of tobacco products or tobacco substitutes on state property. These items are defined above shall be considered contraband."

4. NWCX Policy and Procedures 112.11.1, *Tobacco Free Workplace*, and NWCX Post Orders, General Orders. "V. POLICY: All use of tobacco or tobacco related products and tobacco substitutes are considered contraband and are prohibited within any and all buildings, state vehicles, and property under the control of NWCX."

5. Contraband is defined in Department policy 506.06 Section IV. B. as "any

item not permitted by law or expressly prohibited by TDOC or institutional policy". Section H of this policy states: "Employees found possessing contraband shall be subject to disciplinary action up to and including termination."

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 her termination from employment with the Department of Correction.

Grievant clearly engaged in attempting to smuggle contraband into the facility. The proof sustains that when confronted about the contraband, the Grievant attempted to destroy the evidence.

CONCLUSIONS OF LAW

1. It is concluded that the Department has met its burden of proof that Grievant violated **Department Policy 112.11** and **NWCX Policy 112.11-1.**

2. Grievant did not attend the Level 5 hearing.

3. Based on the above, it is determined that the termination of the Grievant's employment with the Department was **proper**.

4. Therefore, it is **ORDERED** that Grievant's termination of her employment with the Department of Correction be **UPHELD**.

IT IS SO ORDERED

This Initial Order entered and effective this 14 day of September, 2012

_____
Anthony Adgent
Administrative Judge

Submitted by:

_____
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