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6-27-2012

## DEPARTMENT OF SAFETY vs. FRANKIE GROOMS, Grievant

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**BEFORE THE CIVIL SERVICE COMMISSION  
FOR THE STATE OF TENNESSEE**

**IN THE MATTER OF:**

**DEPARTMENT OF SAFETY**

**v.**

**FRANKIE GROOMS**

**Grievant**

**DOCKET NO. 26.19-110191J**

**INITIAL ORDER**

This matter was heard on June 27, 2012, before Leonard Pogue, Administrative Judge, sitting for the Tennessee Civil Service Commission. Deborah Martin represented the Department of Safety (“Department”). Grievant Frankie Grooms (“Grievant”) was present and represented by attorney Roger Woolsey. This matter became ready for consideration upon the submission of proposed findings of fact and conclusions of law (Department submitted proposed findings on September 14, 2012; Grievant submit proposed findings on October 24, 2012). The subject of the hearing was Grievant’s appeal of her termination by the Department. After consideration of the entire record in this matter, it is determined that the termination should be **UPHELD**. This decision is based upon the following Findings of Fact and Conclusions of Law:

## **FINDINGS OF FACT**

1. Grievant was employed with the Department for twenty-six years. At the time of her termination, she was Branch Supervisor for a Driver's License Office in Greene County. In her position she supervised 3 employees, was responsible for funds management and the operation of the branch office.

2. Grievant had also worked as an examiner and district supervisor for the Department. Throughout her tenure with the Department, Grievant received positive yearly performance evaluations. Grievant had no prior disciplinary actions.

3. Prior to working for the Department, Grievant was employed with the Cocke County Clerk's Office for 6-7 years.

4. On August 26, 2010, a due process discussion was held concerning allegations that Grievant falsely reported the purchase price of a motor home in order to pay lower sales tax. On October 1, 2010, a Department representative conducted a Step IV Hearing. Commissioner Dave Mitchell, by letter dated October 6, 2010, determined that there was sufficient evidence to support termination.

5. The grounds for the termination were for violating Department of Human Resources Rule 1120-10-.06(8) gross misconduct or conduct unbecoming an employee in State service; Rule 1120-10-06(24) for the good of the service as outlined in T.C.A. § 8-3-326; and for violating Department General Order 216-1, IX, B, 1, (a) (1) (3) and (5).

6. In May of 2009, the Department instituted an audit of the Department's Criminal Investigations Division (CID). Grievant's husband, Billy Grooms, was head of Region 1 of the CID. Some irregularities were allegedly found relative to Billy Grooms record keeping of

confidential funds. As a result, the Department began a criminal investigation looking into the personal property and vehicles owned by Billy Grooms and Grievant.

7. One of the Department's investigators, Sergeant Stan Hollandsworth, reviewed vehicle title histories. Sergeant Hollandsworth noticed that the purchase price of a recreational vehicle (RV) bought by the Grooms appeared to have been altered from \$78,000 to \$48,000. The sellers of the RV were contacted and they produced a bill of sale showing that the RV was sold to Billy Grooms for \$78,000 on July, 8, 2008.

8. Grievant looked at the RV before it was purchased by her and her husband. Mr. Grooms handled the actual negotiations for the sale of the RV and the financing. Grievant and her husband had discussions about how they would pay for the RV (proceeds from the sale of their camper, a loan, and Mr. Grooms' savings account). Grievant withdrew \$4,000 from her savings account to contribute to the purchase.

9. Because he was going out of town, Mr. Grooms requested that Grievant take the title to the Clerk's office to be registered. Grievant acknowledges signing her name on the title but denies filling in or altering the sales price or reviewing the title. At the Clerk's office, Grievant handed the title to a worker in the Clerk's office and then paid the amount of sales tax she was told that was owed, \$3,360. The title shows a sales price of \$48,000, not \$78,000. The registration form, dated July 28, 2008, lists a sale price of \$48,000 and sales tax of \$3,360. This form was signed by Grievant.

10. On April 27, 2010, Sergeant Hollandsworth and another investigator interviewed Grievant regarding the RV. Grievant agreed to the interview and was read her Miranda rights. Grievant initially stated that the RV was purchased for \$48,000. However, when shown the seemingly altered title and bill of sale, Grievant acknowledged the sales price was \$78,000.

Grievant also admitted that when she registered the RV she knew the listed amount of \$48,000 was not correct. Grievant denied altering the title and said she didn't witness her husband or anyone else alter the title.

11. At the hearing Grievant denied that she tried to or attempted to pay less sales tax than should have been paid for the purchase of the RV. However, she admitted that when her husband negotiated the deal that they were paying \$78,000 for the RV.

12. The Grooms' tax preparer, Roy Monk, had a discussion regarding the amount of the sales tax payment on the RV with the Grooms in January 2010 for purposes of an income tax deduction. Mr. Monk recalls Mr. Grooms indicating that he paid between \$70,000 and \$80,000 for the RV.

13. In April 2010, Mr. Grooms told the County Clerk that he owed more sales tax on the RV because the original amount submitted was based on the amount financed and not on the purchase price. Mr. Grooms then paid the difference, \$2,100.

14. Michael Hogan, Director of Driver Services Division, reviewed a summary report of the investigation. He understood that Grievant falsified information and admitted to misrepresenting the purchase price of the RV. According to Mr. Hogan, a supervisor such as Grievant, handles money, is in charge of the station, and has privy to personal information of the public as part of her job duties. Mr. Hogan recommended Grievant's termination.

15. Grievant was indicted by a Greene County Grand Jury for sales tax evasion. Grievant was terminated before she was indicted. At the time of the hearing, charges were still pending.

## CONCLUSIONS OF LAW

1. The Department has the burden of proof, under Rule 1360-4-1-.02(7) of the Uniform Rules of Procedure for Hearing Cases before State Administrative Agencies, to show by a preponderance of the evidence that its decision to terminate Grievant was proper.

2. Tennessee Department of Human Resources Rule 1120-10-.07, PROGRESSIVE DISCIPLINARY ACTION, states in relevant part:

- (1) The supervisor is responsible for maintaining the proper performance level, conduct and discipline of the employees under his supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the appropriate step as described.
- (2) Oral Warning
- (3) Written Warning
- (4) Suspension Without Pay
  - (a) After minimal due process is provided, a suspension without pay may be issued by the appointing authority for one (1) to thirty (30) days.
- (5) Dismissal
  - (a) After minimum due process is provided, an employee may be dismissed by the appointing authority from his position for unacceptable conduct or performance of duties.
- (6) Transfer or Demotion. If it is determined by the appointing authority that an employee's ability to satisfactorily perform his duties is beyond the capabilities of the employee or the employee has been compromised by notorious conduct to the extent that he is ineffective in his position, the employee may be demoted or transferred to a position that is more appropriate after minimum due process has been provided.

3. T.C.A. § 8-30-330, Progressive Discipline, states in relevant part:
  - (a) The supervisor is responsible for maintaining the proper performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the lowest appropriate step for each area of misconduct.
  - (c) When corrective action is necessary, the supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance. Subsequent infractions or poor performance may result in more severe discipline in accordance with subsection (a).

4. Tennessee Department of Human Resources Rule 1120-10-.06, EXAMPLES OF DISCIPLINARY OFFENSES, lists the following as examples of disciplinary offenses:

- (8) Gross misconduct ("any job related misconduct which may subject an employee to criminal prosecution") or conduct unbecoming an employee in state service.
- (24) For the good of the service as outlined in T.C.A. 8-30-326.

5. Department of Safety, General Order 216-1, II, POLICY, provides, in part, as follows:

It is the policy of the Department of Safety to warn, suspend, demote, or dismiss any employee whenever just or legal cause exists. Furthermore, employees shall not commit any act that would reflect discredit upon themselves and/or the Department while on or off duty. It is vital that employees concerned be fully aware of the penalties for misconduct and the procedures for enforcing them.

6. T.C.A. § 8-30-326, Dismissal, states in relevant part:
  - (a) An appointing authority may dismiss any employee in the authority's division when the authority considers that the good of the service will be served thereby.
  - (b) Whenever an employee is dismissed "for the good of the service," the notice of termination must outline in detail how the service will be benefited by such termination.

7. Department of Safety, General Order 216-1, IX, CAUSES FOR DISCIPLINARY

ACTION states:

B. It is not feasible to itemize every cause in which disciplinary action may be taken. The following causes are examples of those considered for disciplinary action and should not be considered the only causes.

1. CONFORMANCE TO LAWS:

a. Each employee shall obey the laws of the United States, the State of Tennessee, and of local jurisdictions.

(1) If facts revealed by a thorough investigation indicate there is evidence an employee has committed acts, which constitute a violation of a civil or criminal law, ordinance, or infraction other than a parking ordinance, then the member may be deemed to have violated this subsection, even if the member is not prosecuted or is found not guilty in court.

....

(4) Employees are expected to be good examples to the public in abiding by and complying with all traffic laws, rule and regulations, and other laws.

3. UNBECOMING CONDUCT:

a. Each employee shall conduct themselves at all times, on and off duty, in a manner as to reflect most favorably upon themselves and/or the Department.

(1) Unbecoming conduct shall include any conduct which tends to bring the Department into disrepute; or which reflects discredit upon the Department or any employee(s) of the Department; or which tends to impair the operations and efficiency of the Department or any employee; or which violates Departmental policy.

....

5. TRUTHFULNESS:

(a) Employees shall be truthful in all written and oral communications, reports, and testimony. No employee shall report any inaccurate, false, improper, or misleading information.

....

8. The proof established that the sales price of the RV was \$78,000 and not \$48,000, based on the following: the title appears to be altered from \$78,000 to \$48,000 (there was no proof that Grievant altered the title); the bill of sale shows \$78,000 as the purchase price; and Grievant admitted (in the interview and the hearing) that the sales price was \$78,000.

9. Grievant testified that she did not attempt to pay less sales tax than should have been paid. However, in the interview with the investigators, Grievant ultimately admitted that when she registered the title she knew that \$48,000 was not the correct amount. Additionally, she signed the registration document that listed the sales price as \$48,000 (her signature is just below the \$48,000 listed sales price). Also, the sales tax for \$48,000 is \$3,360; the sales tax for \$78,000 is \$5,460. Grievant worked for 6-7 years in a County Clerk's office registering vehicles. It seems logical that Grievant would have been alerted that either the calculation or sales amount was wrong when told what the taxable amount was since there is a significant discrepancy between \$5,460 and \$3,360. Lastly, it is noted that Grievant did not appear to be truthful with the investigators. She initially told them that the sales price was \$48,000. When presented with the bill of sale showing \$78,000, Grievant admitted that it was \$78,000. It is determined that Grievant knowingly presented the title for \$48,000 rather than \$78,000 and paid sales taxes on less than the purchase price.

10. Having concluded that Grievant knowingly paid less sales tax, it is necessary to determine if there are any violations of rules, statutes, and/or orders to warrant disciplinary action:

a) The Department alleges Grievant violated Department of Human Resources Rule 1120-10-.06 (8). Grievant's actions did not occur on the job and therefore the definition of gross misconduct (8) and conduct unbecoming an employee in state service has not been met.

b) Department of Safety, General Order 216-1, IX, B. 1. CONFORMANCE TO LAWS relates to violation of a civil or criminal law. Grievant was recommended for termination on May 12, 2010 and her termination was official on October 6, 2010, the date of her termination letter from the Commissioner. Her indictment occurred after both dates. Obviously, neither letter of termination lists the indictment as a basis for termination. The May 12 due process memorandum references criminal acts having been committed by Grievant due to the sales tax issue. The criminal charges were pending at the time of the hearing and there was not proof of a criminal law violation sufficient to find a violation of General Order 216-1, IX, B. 1. CONFORMANCE TO LAWS.

c) The Department alleges Grievant violated Department of Safety, General Order 216-1, IX, B. 3. UNBECOMING CONDUCT, which is defined, in part, as: conduct, on or off duty, which reflects discredit upon any employee of the Department. Grievant's action of presenting the title for \$48,000 rather than \$78,000 and paying sales taxes on less than the purchase price clearly reflects discredit upon Grievant and is conduct unbecoming an employee. It is determined that Grievant violated General Order 216-1, IX, B. 3. UNBECOMING CONDUCT.

(d) The Department alleges Grievant violated Department of Safety, General Order 216-1, IX, B. 5(a) TRUTHFULNESS. It appears that this section of causes for disciplinary action concerns on the job conduct. Grievant's actions occurred off duty and therefore there is no violation of General Order 216-1, IX, B. 5(a) TRUTHFULNESS.

11. The Department argues that termination is appropriate pursuant to Tennessee Department of Human Resources Rule 1120-10-.06 (24) for the good of the service as outlined in T.C.A. 8-30-326. In Grievant's termination letter the Department lists how it will be benefitted by the termination. Specifically, it noted that Grievant's "actions have seriously impaired your

usefulness and efficiency” and may be a violation of criminal law. The Department further noted that Grievant is a “supervisor in charge of an office that handles monies and sensitive identification information derived from the public. It is important that the department trusts your judgment and character. By your actions, you have let the department know that you are untrustworthy and that you are not honest. As a supervisor, the department expects you to be a role model for the employees you supervise. By your actions, you have shown that the department cannot trust you to be a role model for the employees under your supervising.”

12. Grievant had no prior disciplinary history and by all accounts had been a good employee for the Department. Nonetheless, Grievant is a supervisor. She is responsible for managing an office, handling money and dealing with the private information of the public. Grievant’s actions in this matter demonstrate poor judgment, a lack of integrity and trustworthiness. It is entirely reasonable for the Department to lose confidence in Grievant’s professional judgment and integrity. Grievant’s termination is appropriate discipline for Grievant’s actions and for the good of the service pursuant to Department of Human Resources Rule 1120-10-.06 (24).

13. Grievant argues that the Department did not comply with General Order 216-1, V, DOCUMENTING COMPLIMANTS AND INVESTIGATION OF COMPLAINTS. This section is inapplicable to this matter since the investigation did not originate with a complaint against Grievant. Grievant does not allege that she was not afforded minimum due process relative to her termination pursuant to Department of Human Resources Rule 1120-10-.02.

14. Grievant contends that the testimony of Mr. Monk establishes that Grievant and her husband made a mistake in paying the taxes. Mr. Monk’s testimony does not dispel a finding

that Grievant knew that she presented the title for \$48,000 rather than \$78,000 and paid sales taxes on less than the purchase price.

It is **ORDERED** that the decision by the Department of Safety to terminate Grievant be **UPHELD**.

This Initial Order entered this 14 day of December, 2012

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Thomas G. Stovall, Director  
Administrative Procedures Division