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Department of Environment and Conservation vs. Deborah Ridenour

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:

**Dept. of Environment and Conservation,
Petitioner,**

DOCKET NO: 26.04-117181J

Vs.

**Deborah Ridenour,
Grievant.**

INITIAL ORDER

This matter was heard on March 6, 2013, in Nashville, Tennessee, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Civil Service Commission. Attorney Kim Kirk represented the Department of Environment and Conservation (Department). Grievant was present for the hearing and not represented by counsel.

ISSUES FOR DETERMINATION

1. Did the Department show, by a preponderance of the evidence, that Grievant allowed patrons of Henry Horton Restaurant to dine without paying for their meals?
2. Was termination of employment the proper disciplinary action for Grievant's conduct?

SUMMARY OF DETERMINATION

The Department showed, by a preponderance of the evidence, that Grievant used her managerial authority to permit patrons of Henry Horton Restaurant to dine for free. Grievant's disciplinary history reveals a pattern of insubordination and failure to comply with Department policies. Under these circumstances termination was the only appropriate disciplinary action.

The Department's decision terminating Grievant is upheld. This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Grievant began her employment at Henry Horton State Park (Park) in 1992 as a housekeeper at the inn. Grievant's prior disciplinary history is as follows:

January 9, 2008, Written Warning for violation of the TDEC Workplace Harassment Policy.

March 20, 2009, Oral Warning for insubordination relating to an off-site training for which a supervisor was to pick up Park participants, including Grievant. Grievant informed her supervisor that "if I'm not driving, I'm not going," and refused to attend the training.

February 17, 2010, Written Warning for insubordination for refusing to follow a specific instruction from the Department's Assistant Commissioner to upgrade the quality of food served at a park ranger in-service event. Grievant did not think this necessary and had an employee who helped organize the in-service authorize the use of food already purchased for the event.

July 27, 2011, Written Warning for insubordination when she entered a reservation for the Park conference center for her niece's high school reunion. Grievant reserved the facility at the employee discounted rate although her niece was not a state employee. The employee discount rate cannot be shared with family members. When instructed to correct the reservation to the proper charge, Grievant instead changed the reservation into her own name to obtain the employee discounted rate. Management eventually instructed another employee to change the reservation to the correct name and the correct charge for the facility.

September 27, 2011, One day suspension without pay for insubordination and unauthorized access to employee timekeeping in the Hospitality Management System (HMS). Grievant was instructed not to alter work times in the HMS, and her access to the timekeeping function in the HMS was restricted. Grievant ignored this directive and used the then General Manager's password to enter the HMS and change her own work times and that of other employees.

Additionally, on October 28, 2011, Grievant's supervisor documented seeing Grievant smoking outside the inn in a no smoking area. Designated smoking areas are identified for employees. Grievant told her supervisor, "I know that I'm illegal, but I'm not going to stand out in the rain." Grievant's supervisor observed other park employees standing in the rain in the designated smoking area in compliance with the rules.

2. At the time of her termination, Grievant was Hospitality Assistant, reporting to the General Manager. The highest ranking hospitality services position at the Park is the position Hospitality Manager 2, also referred to as the General Manager. The General Manager is responsible for both the Park's restaurant and inn.

3. During the fall of 2011, the General Manger of hospitality retired. Her position was not immediately filled because the Department was considering closing the restaurant due to poor performance.

4. In October 2011, Ms. Terri Carter was temporarily assigned to the General Manager's position at the Park.

5. On November 11, 2011, Grievant, Carter, and Doug Stephens, a Department supervisor from Nashville, worked at the Park's inn and restaurant. Grievant's work day ended at 4:30 p.m. and she left the premises.

6. After leaving the work on November 11, 2011, Grievant called cashier Quentin Watkins three times inquiring whether Carter and Stephens were at the Park. Grievant also alerted Watkins that three guests of hers would be eating at the restaurant.

7. Before 7:00 p.m. on November 11, 2011, three male guests arrived at the restaurant. Carter observed the men as they entered the restaurant and were seated. Grievant arrived at approximately the same time. One of the male guests was Grievant's boyfriend then boyfriend. Cashier Watkins was familiar with the three men since they dined at the restaurant approximately once per month and did not pay for their meals.

8. Grievant went to the cashier's station where Watkins was stationed and accessed the point of sale (POS) system which records the restaurant's sales. Watkins saw Ms. Ridenour searching through the guests tickets recorded in the system. Watkins knew from past experience

that Grievant was searching for a paid guest ticket matching her guests that could be used as a receipt for their meals.

9. Carter entered the restaurant's dining and noticed Grievant at the register. Only the cashier is authorized to access the register. When Carter confronted Grievant, she observed Grievant change the screen on the POS system to a new screen showing the number of patrons in the restaurant. Grievant was surprised by Carter's presence.

10. Grievant advised Carter that she was checking the number of patrons to ensure there was adequate staff at the restaurant. Carter advised Grievant that all was well and that Grievant should not access the POS system and/or register. Carter found Grievant's demeanor and explanation to be unusual.

11. Grievant engaged Carter in conversation and followed Carter to a server's table where silverware is rolled and began discussing hospitality operations. In Carter's month at the Park, Grievant had never spoken with Carter about operations. Grievant intended to engage Carter in order to distract her from the three male guests.

12. When the three male guests exited the restaurant, Grievant suddenly stood from the table, saying her ride was waiting and exited through a side door. Carter found this odd because Grievant could not see outside the restaurant from her locations and she had not received a phone call or other alert that a ride was present for her.

13. Grievant was observed leaving the restaurant in her own vehicle and her boyfriend, one of the three male guests, left with her.

14. Shortly thereafter, Grievant's estranged husband, who works in the restaurant's kitchen, approached Carter and asked if she met Grievant's boyfriend. He explained that Grievant's boyfriend was one of the three male guests that just left the restaurant.

15. Carter became concerned and went to the cashier's station and instructed Watkins to give her the three men's meal ticket. At first, Watkins said he could not locate the ticket and then said he threw the ticket away. Carter told Watkins to retrieve the ticket from the trash can. Watkins began looking through the trash can.

16. Park Ranger Dwyer was at the restaurant on his regular patrol. He was present at the cashier's station when this occurred. Dwyer told Watkins that he needed to tell Carter the truth about what occurred. Watkins reacted with agitation, covered his face with his hands and told Carter there was no ticket, because the three men had not paid for their meals.

17. Watkins went on to tell Carter that the men ate at the restaurant at times and never paid because of their relationship with Grievant. Watkins admitted that Grievant called earlier in the evening to alert him of the men's arrival and inquire about whether Carter and Stephens were still present.

18. Della Corbin waited on the three male guests on November 11, 2011. When she attempted to give them tickets for their meals she was told "we're with Deb [Grievant]," and "we don't pay."

19. During the investigation, it was learned that on a prior occasion, Grievant gave free meals to server Jordan Greens' mother. Grievant also allowed five guests to dine for free after the funeral of a co-worker's relative. On this occasion, Grievant called the restaurant and instructed employees to keep the buffet open after closing time to accommodate her group.

20. In the week before the November 11, 2011 incident, restaurant cashier Lynch observed Grievant eat at the restaurant and leave without paying. Grievant was also observed filling a to go box at the buffet and take it with her on another occasion.

21. On another occasion, restaurant employee Carol Mullins observed Grievant fill a to-go box with crab legs at the buffet and leave the restaurant without paying.

22. Department Policy 301 states in relevant part as follows:

Under no circumstances will relatives or guests of employees be allowed to participate in this reduced price program. Employees from central office (unless specified in B. above) and other state parks are not eligible for the reduced priced meals.

Due to the fact that any abuse of this procedure will be considered personal conduct detrimental to state service, the disciplinary action recommended in the Rules of the Tennessee Department of Personnel should be employed where such offense is considered a deliberate attempt to avoid payment for food services. Records of such disciplinary actions for park personnel and supervisors shall be sent to the Assistant Commissioner of Tennessee State Parks with a copy to TDEC Division of Human Resources.

23. Grievant was aware of and trained on this policy. The policy allows employees, including Grievant, to eat one free meal from the buffet while on duty at the restaurant. The employee must consume the meal at the restaurant and sign a meal register to document it. Any food taken from the restaurant, including leftovers from the employee's meal, must be paid for. The policy is designed to discourage employees from taking more food from the buffet than they will consume at the restaurant.

24. The Department has shown, by a preponderance of the evidence, that Grievant frequently allowed patrons to dine for free at the Park's restaurant. Grievant also personally violated the Department's policy concerning payment of meals at the restaurant.

25. Grievant's prior disciplinary history indicates a disregard for the Department's policies and insubordination of her supervisors. The Department provided her progressive discipline, but she continued to disregard Department's policies. Termination was the only appropriate level of action for the Department to take.

CONCLUSIONS OF 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. T.C.A. §4-5-301.
2. It is a de novo proceeding, and no presumption of correctness attaches to the action of the agency. Big Fork Mining Co. v. Tennessee Water Quality Control Board, 620 S.W. 2d 515, at 521 (Tenn. App. 1981).
3. The burden of proof rests with the agency and the agency must prove by a preponderance of the evidence that 1) the Grievant acted or failed to act as the agency alleges; 2) the Grievant's action constitutes a disciplinary offense; and 3) the recommended discipline is appropriate for the given offense. Id. at 520. Some instances of misconduct require an elevated level of discipline, even if the employee has no history of prior disciplinary action. Berning v. State, 996 S.W.2d 828, 830 (Tenn. App. 1999).
4. The Department bears the burden of proof in this case. The standard of proof is a preponderance of the evidence. TN. Department of State, Administrative Procedures Division, Rule 1360-4-1-.02(3)(7).
5. Preponderance of the evidence simply means "the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion." Id.
6. **PURPOSE (Rule 1120-10-.01)**
To establish standards for the application of disciplinary procedures which will assure fairness and uniformity among agencies and institutions subject to the provisions of these rules.
7. **POLICY (Rule 1120-10-.02)**
A career employee may be warned, suspended, demoted or dismissed by his appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this rule and the Act. An executive service employee serves at the pleasure of the appointing authority.

8. MINIMUM DUE PROCESS (Rule 1120-10-.03)

(1) Career employees have a "property right" to a position in the classification in which they currently hold career status. Therefore, no suspension, demotion, dismissal or any other action which deprives a regular (career) employee of his "property right" will become effective until minimum due process is provided as outlined below.

(2) Minimum due process consists of the following:

(a) The employee shall be notified of the charges against him. Such notification shall detail times, places, and other pertinent facts concerning the charges and should be in writing.

(b) The notification will provide for the employee to have a predecision discussion with an appropriate manager and will state the mechanism through which such a discussion may be arranged. The employee should be given a reasonable period of time to prepare to answer charges and present information which might influence the manager's decision.

(c) The manager conducting such discussions must be an appointing authority or manager who has direct access to an appointing authority for this purpose.

(d) The meeting outlined above shall be for the purpose of allowing the employee to present information to the manager regarding the disciplinary action under consideration.

(e) The discussion shall be informal. The employees shall have the right to present written statements of witnesses or any other information with regard to the charges. Attendance and participation by persons other than the manager and the employee shall be at the discretion of the manager.

(f) If the employee declines the opportunity to have the discussion or present information, the provisions of this section are deemed to have been met.

(3) The commission shall determine as a preliminary matter to the merits of a grievance, a Grievant's allegation that he or she was denied minimum due process.

9. EXCEPTION TO MINIMUM DUE PROCESS (Rule 1120-10-.04)

When an employee is acting in a dangerous or otherwise threatening manner and must be removed from the workplace immediately, it is not necessary to provide "minimum due process" prior to removal. Minimum due process must be provided after removal as soon as practicable. The employee, in this case, may be placed on leave or on immediate suspension without pay.

10. CAUSES FOR DISCIPLINARY ACTION (Rule 1120-10-.05)

Causes for disciplinary action fall into two categories.

(1) Causes relating to performance of duties.

(2) Causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job.

11. EXAMPLES OF DISCIPLINARY OFFENSES (Rule 1120-10-.06)

The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.

(1) Inefficiency or incompetency in the performance of duties.

(2) Negligence in the performance of duties.

(3) Careless, negligent or improper use of State property or equipment.

(4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.

(5) Habitual improper use of sick leave privileges.

- (6) Habitual pattern of failure to report for duty at the assigned time and place.
- (7) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment.
- (8) Gross misconduct or conduct unbecoming an employee in the State service.
- (9) Conviction of a felony.
- (10) Willful abuse or misappropriation of State funds, property or equipment.
- (11) Falsification of an official document relating to or affecting employment.
- (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service or that would interfere with the ability of management to manage.
- (13) Trespassing on the property of any State officer or employee for the purpose of harassment.
- (14) Damage or destruction of State property.
- (15) Acts that would endanger the lives and property of others.
- (16) Possession of unauthorized firearms, lethal weapons, alcohol or illegal drugs on the job.
- (17) Brutality in the performance of duties.
- (18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).
- (19) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job.
- (20) Sleeping or failure to remain alert during duty hours.
- (21) Betrayal of confidential information.
- (22) Garnishment of wages for more than one indebtedness.
- (23) Political activity prohibited by T.C.A. Title 2, Chapter 19 (The Little Hatch Act)
- (24) For the good of the service as outlined in T.C.A. 8-30-326. (Emphasis added).

12. PROGRESSIVE DISCIPLINARY ACTION (Rule 1120-10-.07)

(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. The supervisor will meet privately with the employee to:

- (a) Review with the employee exactly what is expected on the job and why.
- (b) Explain to the employee how he has not met requirements and why present conduct or performance is unacceptable.
- (c) Allow the employee to give reasons for his actions or failure.
- (d) Make suggestions for correction.
- (e) Record the date of the discussion and other necessary information for future reference.
- (f) Written follow-up to the discussion may be forwarded to the employee but is not required. Written follow-up to an oral warning should not be construed as a written warning as described below and will not become part of the employee's official personnel file.

(3) Written Warning. The supervisor will meet with the employee and:

- (a) Review the points covered in the oral warning, if an oral warning(s) was administered. The employee will be told that a significant change in his present conduct or performance must be made.
- (b) Tell the employee he will receive a letter covering the significant points of the discussion to include:

1. What has been expected and how these expectations have not been met.

2. Suggestions for improvement.

3. Indication that failure to improve will lead to further disciplinary action.

(c) Review with the organizational unit head the contents of the letter prior to its delivery to the employee by the supervisor.

(d) A copy of the written warning may be placed in the employee's official personnel file in the agency personnel office at the discretion of the appointing authority. Any written warning which has been issued to an employee shall be automatically expunged from the employee's personnel file after a period of two (2) years from the date of the letter; provided, that the employee has had no further disciplinary actions with respect to the same area of performance, conduct, and discipline.

(4) Suspension Without Pay.

(a) After minimum due process is provided, a suspension without pay may be issued by the appointing authority for one (1) to thirty (30) days. No employee may be suspended without pay for disciplinary purposes for more than thirty (30) days in any consecutive twelve (12) month period. Suspensions with or without pay of more than thirty (30) days may be issued pending the outcome of an investigation or legal action with approval of the Commissioner.

(b) Before issuance, a written notice of the suspension without pay will be prepared. The notice will contain an account of the circumstances which led to the decision to issue the suspension, the beginning and ending dates of the suspension and information to the employee concerning his rights of appeal as outlined in Chapter 1120-11 of these rules. A copy of the notice will be placed in the employee's official personnel file and a copy will be sent to the Department.

(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.

(b) Before an employee is dismissed, a written notification detailing the circumstances leading to the decision to dismiss will be prepared. The notice will indicate the effective date and inform the employee of his rights to appeal as outlined in Chapter 1120-11 of these rules. A copy of the notice will be placed in the employee's official personnel file and a copy will be sent to the Department.

(c) Before an employee can be dismissed, he must be given ten (10) calendar days paid notice. During the notice period an employee will not be required to report for duty. The employee's accumulated annual leave balance may be used during this notice period only if dismissal was for gross misconduct.

(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.

13. **GRIEVANCE/PURPOSE (Rule 1120-11-.01)**

To provide clear, orderly and expedient procedures through which all career or permanent employees of the State service may process bona fide complaints or grievances.

14. **GRIEVANCE/POLICY (Rule 1120-11-.02)**

(1) Career and permanent employees will be given every opportunity to resolve bona fide complaints or grievances through established procedures. Every reasonable effort will be made to resolve complaints at the lowest possible step in the procedure.

(2) Employees using this procedure will be entitled to process their complaints or grievances without fear, interference, discrimination, or reprisal.

15. GRIEVANCE/RESPONSIBILITY (Rule 1120-11-.03)

(1) The Commissioner will be responsible for providing and maintaining the basic standards and guidelines for implementing this rule chapter.

(2) Appointing authorities will be responsible for the proper effectuation of this rule chapter throughout their respective agencies. Modification of these procedures may be made in order to satisfy unusual circumstances within an agency if such modification is approved by the Commissioner.

(3) Appointing authorities will be responsible for ensuring that all employees and supervisory personnel are aware of the provisions of this rule chapter.

16. GRIEVANCE/BASIC STANDARDS (Rule 1120-11-.04)

(1) A complaint or grievance must be filed at the appropriate step in the grievance procedure within fifteen (15) workdays (Monday - Friday, 8:00 a.m. - 4:30 p.m.) of the action which is the basis for the grievance, otherwise it will be considered untimely and invalid.

(2) Although no standard grievance forms are provided, agencies may develop and make available such forms to employees. No grievance may be denied because a standard form adopted by an agency has not been used.

(3) A grievant may represent himself at any step in the procedure.

(4) At the informal hearing before the appointing authority, an attorney or a representative of an employee may speak on behalf of the employee.

(5) Legal counsel may represent a grievant before the Civil Service Commission, which is the final step of this procedure. The grievant and the agency may have counsel present at discussions prior to the final step. The presence of other observers at discussions prior to the final step of this procedure is at the discretion of the manager or supervisor in charge of that discussion.

(6) Grievants may present grievances during business hours or other mutually agreeable hours as work situations may require. Grievance discussions held during the scheduled off-duty hours for a grievant, witness, or representative will be considered the same as overtime work. Grievants or employees who are required to appear as witnesses or representatives will not be required to use leave for such periods and shall be reimbursed for travel and other expenses in accordance with the comprehensive travel regulations.

(7) Grievances concerning suspension without pay must be appealed to the lowest management level in the organization with authority to overturn the suspension.

(8) Grievances concerning dismissal should be appealed directly to the appointing authority, warden, or superintendent.

(9) Grievances concerning alleged discrimination prohibited by T.C.A. 8-50-103 or T.C.A. 4-21-401 may be appealed directly to the appointing authority, warden, or superintendent through this procedure. If the aggrieved is unsatisfied with the decision, the grievance and the appointing authority's response may be appealed to the Commission within thirty (30) days or the Tennessee Human Rights Commission as provided in T.C.A. 8-50-103(b).

(10) Grievance decisions should be communicated in writing directly to the grievant in a timely manner as outlined in Chapter 1120-11-.05. Certified or registered mail is mandatory if a decision must be mailed. Hand delivered grievance decisions should include a written heading indicating "Hand Delivered" with a place for a signature.

(11) Grievances must be expressed in reasonable terms. Each grievance submitted should contain:

- (a) the basis for the grievance;
- (b) the settlement or corrective action desired by grievant; and
- (c) sufficient facts or other information to begin an investigation.

17. GRIEVANCE/PROCEDURES (Rule 1120-11-.05)

The appropriate entrance step is determined by the grievant's relative level in the organization. Procedures shall not be more than five (5) steps to finality as follows:

(1) Step I - Grievant's immediate Supervisor (verbal)

- (a) Verbal discussion with supervisor within fifteen (15) workdays of cause.
- (b) Supervisory investigation and fact finding.
- (c) Decision clearly communicated to grievant within five (5) workdays of discussion.

(2) Step II - Next Appropriate Higher Level of Management (written)

- (a) Written grievance submitted to appropriate manager within ten (10) workdays of receipt of Step I decision.
- (b) Informal discussion or hearing of facts and allegations.
- (c) Investigation, fact finding, and written decision communicated to grievant within ten (10) workdays of discussion.

(3) Step III - Next Appropriate Higher Level of Management (written)

- (a) Written grievance and prior step decision submitted to next appropriate manager within ten (10) workdays of receipt of decision from Step II.
- (b) Informal discussion or hearing of facts and allegations with witnesses and documentation.
- (c) Investigation, fact finding, and written decision clearly communicated to grievant within ten (10) workdays of discussion.

(4) Step IV (written)

- (a) Written grievance and prior step decision submitted to the appointing authority or designee within ten (10) workdays of receipt of decision from Step III.
- (b) Informal discussion or hearing of facts, allegations, and testimony by appropriate witnesses as determined by the appointing authority or designated representative as soon as practical. Whenever possible, the fourth step hearing shall be conducted by a manager who had no input to or involvement in the original decision to discipline.
- (c) Investigation, fact finding, and written final agency decision communicated to grievant within ten (10) workdays of discussion.
- (d) The appointing authority shall have full authority to overturn, reduce, or alter any disciplinary action based on information gathered at the step IV hearing including reinstatement of leave and awards of backpay, if appropriate, which may be offset by income earned from alternative employment or unemployment insurance payment received.

(5) Step V (Formal - Career Employee only)

(a) Written grievance and all relevant documentation shall be submitted within thirty (30) days of receipt of decision from Step IV to:

Secretary, Civil Service Commission
Tennessee Department of Personnel
Second Floor, James K. Polk Building
Nashville, TN 37243-0635

(b) Hearings will be held pursuant to T.C.A. §8-30-328 and the Uniform Administrative Procedures Act.

(6) The time limits set herein may be extended not in excess of six (6) months by written agreement between the manager involved and the employee. Failure of management to proceed within established time limits entitles the grievant to proceed to the next step in this procedure.

(7) Hearings conducted at Step V will conform to the model rules of the Secretary of State for contested cases and the Department hereby adopts Secretary of State Rule 1360-4-1 in statutory compliance.

18. GRIEVANCE/SCOPE OF PROCEDURE (Rule 1120-11-.06)

(1) The Commission will serve as the final step for all grievances by career employees.

(2) The agency appointing authority will serve as the final step for all grievances by permanent employees.

19. GRIEVANCE/GRIEVABLE MATTERS (Rule 1120-11-.07)

(1) Disciplinary suspension or demotion.

(2) Disciplinary dismissal.

(3) Involuntary geographical transfer of an employee or official duty station more than fifty (50) miles. Distance will be determined by drawing a circle, with a 50 mile radius, centered on the previous official duty station

(4) Non-compliance with an approved reduction in force plan by an appointing authority.

(5) Prohibited political activity as outlined in T.C.A. Title 2, Chapter 19 ("The Little Hatch Act").

(6) Coercion of an employee to "waive" his right to consideration on a certificate of eligibles.

(7) Performance evaluations under certain circumstances to the fourth step.

(8) Other matters within the discretion or control of the appointing authority or the Commission.

20. GRIEVANCE/EXCEPTIONS & NON-GRIEVABLE MATTERS (Rule 1120-11-.07)

(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.

21. **GRIEVANCE/TECHNICAL ADVICE AND ASSISTANCE (Rule 1120-11-.09)**

- (1) Technical questions regarding this rule may be resolved by referring questions to the agency personnel section.
- (2) Unresolved technical questions to an agency personnel section may be resolved by referring such to the Department of Personnel, Employee Relations Division.
- (3) Disputes over grievability may be resolved by an agency's appointing authority or by the Commissioner. The Civil Service Commission may review such determinations and, at its discretion, take whatever action it deems appropriate.
- (4) The intent of this policy is to legally, efficiently, and fairly resolve bona fide complaints, and grievances. The initiation of a grievance should not be considered as a negative reflection against an employee, supervisor, or agency management, but should be considered as an effort to communicate and seek resolution of work related problems.
- (5) Management should consider grievances objectively, fairly, and expeditiously while maintaining a helpful, cordial, and professional attitude throughout the process of redress.

Based on the foregoing, IT IS ORDERED that the Department's decision to terminate Grievant is **UPHELD**.

Entered this the _____ day of _____, 2013.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this _____ day of _____ 2013.

Handwritten signature of Thomas G. Stovall in black ink.

Thomas G. Stovall, Director
Administrative Procedures Division