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BEFORE THE CIVIL SERVICE COMMISSION OF THE STATE OF TENNESSEE

IN THE MATTER OF: **DEPARTMENT OF CORRECTION,** ***v.*** **BEVERLY MORRIS,** ***Grievant.***	**DOCKET NO: 26.05-119370J**

INITIAL ORDER

This matter was heard on March 1, 2013, at the Turney Center in Only, Tennessee, before Administrative Judge Kim Summers assigned by the Secretary of State, Administrative Procedures Division, to sit for the Civil Service Commission of the State of Tennessee. The Tennessee Department of Correction (TDOC) was represented at the hearing by Amanda Lewis, Esq. The Grievant represented herself, having waived the right to legal counsel.

The issue presented in this matter is whether the Department properly imposed on the Grievant a one-day suspension for the alleged improper conduct. After consideration of the evidence and argument of the Parties, it is determined that the suspension was proven to be appropriate by a preponderance of the evidence and should therefore be **UPHELD**. This decision is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

The following individuals presented live testimony at the hearing – Warden Jerry Lester; Rhonda Whitt, Director of Education; Rebecca Millay, Principal of the Turney Center School; Mary Stewart, Vocational Instructor with the Turney Center; Rosemary Wallace, Vocational Instructor; Pamela Williams, Security at the Turney Center; and the Grievant.

The following nine exhibits were entered into evidence – EXHIBIT 1, April 23, 2012 Memorandum regarding the two-day suspension; EXHIBIT 2, June 22, 2011 Memorandum regarding a written warning; EXHIBIT 3, Rules regarding Disciplinary Action; EXHIBIT 4, October 29, 2012 letter regarding Level IV Grievance Hearing; EXHIBIT 5, Employee Sign-In Sheet for the Turney Center from March 27, 2012; EXHIBIT 6, Education Policy No. 117.04 from the Department of Correction; EXHIBIT 7, Minutes from March 13, 2012 monthly staff meeting; EXHIBIT 8, March 29, 2012 letter from Mary Stewart; EXHIBIT 9, student roster.

FINDINGS OF FACT

1. The Grievant is employed by TDOC as a Vocational Instructor with the Turney Center in Only, Tennessee, in the Career Management for Success / Release for Success Programs.

2. These Programs prepare inmates for release and, in some cases, are a prerequisite for release.

3. In order to get credit for the Program, the inmate must complete 6 hours of class every week day for 12 weeks for a total of 360 hours of class time.

4. During a faculty meeting on March 13, 2012, with Ms. Whitt and Ms. Millay, the Vocational Instructors were directed to make up missed class time by keeping the students in class until 3:30 p.m. rather than the usual 2:15 p.m.

5. The Grievant was in attendance at this meeting.

6. On March 14, 2012, the Grievant dismissed her class at 2:15.

7. When questioned by Principal Millay about this failure to follow instructions, the Grievant responded that she did not realize that the new release time was to be implemented immediately.

8. Principal Millay did not write up the Grievant for this infraction but repeated the instruction to retain her class each day until 3:30 p.m.

9. On March 27, 2012, Rosemary Wallace, Vocational Instructor in Unit 6, contacted the Grievant for assistance in obtaining a printer cartridge to print out the final exam to be administered to her class the following day.

10. The Grievant's classroom is located inside the security check point, and Unit 6 is located in the Annex which is outside the security check point. Accordingly, any item that is transferred from the Grievant's classroom to Unit 6 must first pass through the security check point.

11. The Grievant was informed that the requested printer cartridge would be available to be picked up by Instructor Wallace the next day if it passed through the security check point by no later than 3:30 p.m.

12. The Grievant decided to dismiss her class early in order to get the printer cartridge to the security check point by 3:30 p.m.

13. The Grievant's job duties do not include providing such assistance to other Instructors.

14. Other alternatives for obtaining the printer cartridge were available to Instructor Wallace.

15. For, again, dismissing her class before 3:30 p.m., the Grievant was recommended for a two-day suspension by her supervisor, Principal Rebecca Millay.

16. Warden Lester upheld the two-day suspension following a due process hearing.

17. The Grievant's suspension was reduced to one day by the Commissioner of the Department of Correction following a Level IV Grievance Hearing.

18. The disciplinary offenses cited in the letter include the following – negligence in the performance of duties; failure to maintain satisfactory and harmonious working relationships with the public and fellow employees; refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

19. The Grievant timely requested a Step V hearing.

RELEVANT LAW

1. Level V Civil Service appeals are heard *de novo* before an Administrative Judge. No presumption of correctness is attached to the agency's action.[1]

2. The Department, as the party seeking to "change the present state of affairs," has the burden of proof, pursuant to TENN. COMP. R. & REGS. 1360–4–1–.02(7), to prove by a preponderance of the evidence that the discipline imposed on the Grievant complies with state law.

3. TENN. COMP. R. & REGS. 1120-10-.01(45) specifies that 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.

4. TENN. COMP. R. & REGS. 1120-10-.05 provides the following examples of possible disciplinary offenses –

(1) Inefficiency in the performance of duties;
(2) Incompetency in the performance of duties;
(3) Negligence in the performance of duties;
(4) Misconduct involving public officials and employees pursuant to T.C.A., Title 39, Chapter 16, Part 4;
(5) Careless, negligent, or improper use of state property or equipment;
(6) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees;
(7) Habitual improper use of sick leave;
(8) Habitual pattern of failure to report for duty at the assigned time and place;
(9) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
(10) Gross misconduct;
(11) Conduct unbecoming an employee in state service;

[1] *Big Fork Mining Co. v. Tennessee Water Quality Control Bd.*, 620 S.W. 2d 515, 521 (Tenn. Ct. App. 1981).

(12) Conviction of a felony;

(13) Willful abuse or misappropriation of state funds, property or equipment;

(14) Falsification of an official document relating to or affecting employment;

(15) 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;

(16) Trespassing on the property of any state officer or employee for the purpose of harassment;

(17) Damage or destruction of state property;

(18) Acts that would endanger the lives and property of others;

(19) Possession of unauthorized firearms, lethal weapons, alcohol or illegal drugs on the job;

(20) Brutality in the performance of duties;

(21) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination);

(22) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job;

(23) Sleeping or failure to remain alert during duty hours;

(24) Unauthorized disclosure of confidential information;

(25) Garnishment of wages for more than one indebtedness;

(26) Political activity prohibited by T.C.A., Title 2, Chapter 19 (the "Little Hatch Act") or by U.S.C., Title 5, Chapter 15 (the "Federal Hatch Act"); and

(27) For the good of the service as outlined in T.C.A. § 8-30-326.

5. TENN. COMP. R. & REGS. 1120-10-.01 provides as follows:

A career [civil service] employee may be warned, suspended, demoted or dismissed by his appointing authority whenever legal or just 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.

6. T.C.A. §8-30-330(a) and (c) sets forth the state's civil service progressive discipline system as follows:

(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 may result in more severe discipline in accordance with subsection (a).

7. Pursuant to Tennessee's Civil Service statutes and rules, supervisors are expected to administer discipline beginning at the lowest appropriate step. An employee's prior conduct, both good and bad, along with his entire work history, can be considered when determining what the appropriate disciplinary action should be.[2]

8. The Court in *Berning v. State Department of Correction*[3] notes that the "key word in the statute [T.C.A. §8-30-330] is *appropriate,"* that "the language of these provisions does not mandate application of discipline in a routine fashion without regard to the nature or severity of the behavior it is intended to address," and that the legislative mandate for progressive discipline should be "scrupulously followed." [4]

ANALYSIS AND CONCLUSIONS OF LAW

1. The preponderance of the evidence presented in this matter has shown the propriety of the one-day suspension imposed on the Grievant by the Department.

2. The Grievant had been informed twice, just a day or two apart, that her class should continue each day until 3:30 p.m. She received this instruction for the second time following her first infraction which preceded the incident in question by only two weeks.

3. Although neither instruction amounted to official disciplinary action, the Grievant had been adequately informed of her supervisor's expectations.

4. Although the Grievant's desire to provide assistance to a co-worker is commendable, it was the co-worker's responsibility to properly plan for her final exam. The Grievant's

[2] *Kelly v. Tennessee Civil Service Commission*, 1999 WL 1072566 (Tenn. Ct. App. 1999).
[3] 996 S.W.2d 828, 830 (Tenn. Ct. App. 1999).
[4] Id. at 830 (quoting the chancellor's order with approval).

responsibility was to follow the instructions of her supervisors. Having failed to do so, for whatever reason, she must suffer the consequences.

5. In recommending the two-day suspension, the Grievant's supervisors could reasonably have believed that discipline more severe than an oral or written warning was needed since the Grievant had already willfully disregarded their instruction on two occasions, and the failure to achieve 360 hours of class time could have potentially dire consequences for the student.

6. The Commissioner sanctioned the suspension even while showing some leniency to the Grievant by reducing the suspension from two days to one.

7. The facts and circumstances of this case support a suspension of either duration, thus additional leniency is not warranted.

Accordingly, it is **ORDERED** that the Grievant's appeal is **DENIED,** and the one-day suspension imposed by the Department is **AFFIRMED**.

The Policy reason for this decision is to protect the citizens and employees of the State of Tennessee and to protect the integrity of the civil service laws and applicable rules.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2013.

DKSummers

_____
KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

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

Thomas G Stovall

_____
THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE