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Department of Labor and Workforce Development vs. John Singleton

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Mailed On:5-3-2013

BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

IN THE MATTER OF:	)	
	)	
DEPARTMENT OF LABOR AND	)	
WORKFORCE DEVELOPMENT,	)	**DOCKET NO. 26.13-117160J**
Petitioner	)	
	)	
vs.	)	
	)	
JOHN SINGLETON,	)	
Grievant	)	

INITIAL ORDER

This matter came before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting for the Tennessee Civil Service Commission, on January 28, 2013. Mr. Landon Lackey, Assistant General Counsel, Tennessee Department of Labor and Workforce Development, represented the State. Grievant John Singleton represented himself.

The subject of the hearing is Grievant's appeal of a five (5) day suspension.

This matter became ready for consideration after receipt of the transcript and both parties' filing of Proposed Orders.

After due consideration of the record and arguments of the parties, it is **DETERMINED** that Grievant Singleton engaged in misconduct and that a five (5) day suspension is the proper discipline for the Grievant's misconduct.

This decision is based on the following:

FINDINGS OF FACTS

1. Grievant John Singleton has worked in the Information Technology (IT) Division as an Information Systems Analyst 3, for the Tennessee Department of Labor and Workforce Development (Department), since 1999.
2. Ms. Saundra Duncan has been the Grievant's supervisor since 2009. When Ms. Duncan became the supervisor of the unit, she was charged by her superiors to improve the efficiency of the unit because it lacked supervision during the previous three (3) years and was unstructured.
3. Ms. Leesa Bray was the project manager for the IT division in 2011 and, since February 2012, has been the administrator of the IT division. Ms. Bray managed projects functionally by assigning work to and setting deadlines for Grievant and others in his unit, but was not the unit's supervisor.
4. The IT division began working on the BP099D project in March 2011. The purpose of the project was to correct problems with payments to unemployment beneficiaries. Over-payments made totaled in the millions. The BP099D project was a top priority for the IT division and for the Department because of concerns with improper unemployment payments and potential non-compliance with the United States Department of Labor's requirements for such payments.
5. Grievant had not previously worked on the ESCOT unemployment system or the eCMATS system before being assigned to project BP099D.
6. Grievant was charged with the task of writing requirements for the business users during the BP099D project. Grievant was to facilitate meetings, gather information, document

meetings with notes, send the notes out for review and approval, and ultimately translate that information into concise, testable business requirements. The goal of this task was to communicate system functions to the business users in a way that someone with a non-technical background could easily understand.

7. The business users were employees of the Department's unemployment division that were the subject matter experts for the BP099D project. Grievant was allowed to interact with the business users throughout the BP099D project.
8. Ms. Duncan envisioned that Grievant's task of writing the requirements for the BP099D project would be complete by July 2011, but Grievant never completed the requirements by himself. Ms. Bray believed that Grievant's task of writing the requirements should have been completed by June 2011.
9. Grievant was tasked with recording meeting notes during the meetings with the business users. From the beginning of the BP099D project, Grievant failed to record meeting notes, despite being tasked with that duty, and failed to capture important information from the business users. When the Grievant did prepare meeting notes, they were unclear.
10. Ms. Bray ended up recording many of the meeting notes herself because of Grievant's failure to properly do so.
11. The business users complained of Grievant's performance of his tasks throughout the BP099D project.
12. By Ms. Bray's estimation, the BP099D project was delayed four or five months because of Grievant's poor performance.
13. During the BP099D project, Grievant was going directly to the programmers to try to persuade them to do the programming despite not having the proper documentation that

Grievant was supposed to produce. Grievant's attempted shortcut in this manner upset the manager of the programmers' unit.

14. Ms. Duncan assigned Joann Watson to assist Grievant with his tasks on the BP099D project. Ms. Watson had other tasks to perform during this time, but was willing to help to get the project completed.
15. During 2011, Ms. Duncan offered guidance and support to Grievant so that he could complete his tasks in a satisfactory manner, but Grievant was unreceptive.
16. Despite being given a July deadline by Ms. Duncan, Grievant's part of the BP099D project was not completed until December 2011.
17. During the BP099D project, Grievant had other tasks, which was usual and customary of individuals at his job classification. One of Grievant's other tasks was working on the RESA project. Similar to the BP099D project, Grievant also failed to write proper requirements for the RESA project.
18. Grievant's performance, particularly on the BP099D and RESA projects, fell below what is expected of someone in his job classification. Grievant's performance was more of what would be expected of an entry level person.
19. Grievant had a job plan, relevant to the time period of the BP099D project, that he signed on March 31, 2011.
20. When Grievant's performance did not improve, Ms. Duncan gave him a verbal warning on July 15, 2011. Ms. Duncan explained to him at that time that he was not meeting deadlines or expectations. When Grievant's performance did not improve after the verbal warning, he was given a written warning on September 30, 2011.

21. When requirements were submitted for the BP099D project to the business users on October 17, 2011, the requirements were so poorly written that they had to be rewritten.
22. After the October 17, 2011 draft, the business users had sixteen (16) change requests that were all marked as high priority. This was highly unusual because on a project like BP099D, Ms. Bray would only have expected approximately three (3) change requests at that point in the project and would have expected such changes to be minor ones, rather than high priority ones.
23. In November 2011, Ms. Duncan performed Grievant's interim performance review, which included one 4, four 2's, and two 1's. Grievant scored 1's in the categories of "business analysis" and "program/system testing," which are "unacceptable" grades.
24. Grievant was given the opportunity to respond to the interim performance review. Grievant's excuse for the poor performance was that he was being made a scapegoat for the BP099D project, but Ms. Duncan stated to him that such was not true and that she was only judging him on his performance.
25. Ms. Duncan never heard any talk of making someone a scapegoat on the BP099D project, other than Grievant's uncorroborated allegations of such. Ms. Bray also never heard any talk of someone being made a scapegoat for the project. It is **DETERMINED** that the Grievant's scapegoat theory has no merit.
26. Another reason that Grievant suggests for his poor performance is health problems. During 2011, however, Grievant had good attendance. The State contends that the Grievant was never denied sick leave. Grievant was denied annual leave on only one occasion in December 2011 because of his lack of progress on the BP099D project.

27. The parties dispute whether or not the Grievant was ever denied sick leave. It is **DETERMINED** that insufficient proof was provided to resolve this factual dispute. Whether or not Grievant's sick leave was denied on July 8th, the one occasion when he had blood in his urine, however, is not central to the matters at issue before the Undersigned.
28. It is **DETERMINED** that some of Grievant's performance problems may have been due to chronic health conditions (diabetes and its complications). It was the Grievant's responsibility, however, to make certain that his chronic health problems did not interfere with his job performance.
29. Ms. Duncan cited to HR Sick Leave Rule 1120-06-.11 in requiring Grievant to present a doctor's note for absences. Never-the-less, Grievant never presented a doctor's note to Ms. Duncan.
30. In December 2011, Ms. Duncan felt that another step of discipline was warranted and recommended a five-day suspension of Grievant for his poor performance.
31. The IT administrator at the time in question, Tyrone Sullivan, supported the decision to suspend Grievant for his poor performance, but would have preferred a three-day suspension. The recommendation for a five-day suspension was upheld by the Commissioner on February 7, 2012.
32. Mr. Sullivan recalled observing Ms. Bray berate Grievant Singleton. Grievant contends that he was working in a hostile environment. There is never a reason for adults to berate one another, especially not in the presence of others. It is **DETERMINED** that Grievant's work environment may have been far less than ideal, never-the-less, such an environment is not an excuse for failure to fulfill one's work obligations. Grievant complains that Ms.

Bray was "spoken to," but not disciplined. It is **DETERMINED** that Grievant's conduct is what is at issue in the instant matter.

33. In his Proposed Order, though not at the hearing, Grievant contends that several managers, such as Mr. Sullivan, have retired or left the Department. Grievant suggests that there was something wrong about the work environment or something wrong with BP099D that caused these departures. Even if true, it is **DETERMINED** that a negative work environment is not an excuse for failure to do one's job.

34. In his Proposed Order, Grievant recommends that he be assigned to another section or office. Such a request is outside the scope of this forum. The purpose of the hearing is solely to determine the proper discipline, if any, for conduct/misconduct engaged in.

CONCLUSIONS OF LAW

1. As the petitioning party, the Department must show that Grievant violated State policies and that a five (5) day suspension is the appropriate discipline for such a violation, by a preponderance of the evidence.

2. In *Kelly v. Tennessee Civil Service Commission*, 1999 WL 1072566 (Tenn. Ct. App. Nov. 30, 1999), the Tennessee Court of Appeals clarified the requirements of progressive discipline under T.C.A. § 8-30-330, which provides that "supervisors are expected to administer discipline beginning at the lowest appropriate step." Id. at *4. The Court explained that:

> **"**[p]rogressive discipline does not require a supervisor to begin at the lowest level of discipline regardless of the nature of the employee's conduct. It simply means that the supervisor should impose the lowest appropriate punishment taking into account the nature of severity of the employee's behavior." Id. In addition,

"supervisors have the discretion to determine what punishment fits the offense." Id.

3. Rule 1120-10-.03(1)-(3) and (21) (formerly Rule 1120-10-.06) of the Tennessee Department of Human Resources provides examples of disciplinary offenses, which include:

   (1) Inefficiency in the performance of duties;

   (2) Incompetency in the performance of duties:

   (3) Negligence in the performance of duties;

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

4. The Department has shown by a preponderance of the evidence that the Grievant violated Tennessee Department of Human Resources Rules in that Grievant's inability to complete the project on time showed inefficiency and negligence as well as refusal to accept a reasonable and proper assignment; Grievant's failure to produce meeting notes and to write program requirements showed incompetency.
5. With violations of Rule 1120-10-.03 established, one must then consider what discipline, if any, is appropriate for Grievant's violations.
6. DOHR Rule 1120-10-.04(3) allows the State to suspend an employee for up to 30 days for violation of the aforementioned rules.
7. In determining what disciplinary action is appropriate, one must take into consideration the totality of the circumstances, including (1) the accused's length of employment; (2) job responsibilities; (3) disciplinary history; (4) the conduct that occurred; and (5) any other relevant factors.

8. Some instances of misconduct require an elevated level of discipline, even if the employee had no history of prior disciplinary action. *Berning v. State*, 996 S.W.2d 828, 830 (Tenn. App. 1999) (explaining that the supervisor has discretion to determine the appropriate punishment).

9. It is **CONCLUDED** that Grievant's conduct merits suspension, since an oral warning and a written warning failed to bring Grievant into compliance with the expectations of his supervisors. Although a three (3) day suspension would have been significant, the Department contends that five (5) days is more appropriate. Given Grievant's relatively high ranking as an Information Systems Analyst 3, it is **CONCLUDED** that five (5) days is not unreasonable for several months of misconduct.

10. Thus, with the Grievant having received an oral warning and a written warning earlier for misconduct of the same kind, it is **CONCLUDED** that a five-day suspension is the appropriate discipline for the misconduct committed by the Grievant in this matter.

11. Based on the above, it is hereby **ORDERED** that Grievant Singleton receive a **FIVE (5) DAY SUSPENSION** for his misconduct**.**

This Initial Order entered and effective this the ___ day of __May __, 2013.

Mattielyn B. Williams
Administrative Judge

Mailed On:5-3-2013

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

_____
Thomas G. Stovall, Director
Administrative Procedures Division