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Department of Revenue vs. Damita Williamson

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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

IN THE MATTER OF:]	
]	
TENNESSEE DEPARTMENT OF REVENUE,]	
<i>Department/Petitioner,</i>]	
vs.]	DOCKET # 26.18-117156J
]	
DAMITA WILLIAMSON,]	
<i>Grievant/Respondent.</i>]	

INITIAL ORDER

This contested administrative case was heard at the offices of the Tennessee Department of Revenue, in Bartlett, Tennessee, on March 21, 2013, before J. Randall LaFavor, Administrative Judge, assigned by the Secretary of State and sitting for the Civil Service Commission. Mr. Jeff Foster, Senior Tax Counsel for the Tennessee Department of Revenue, represented the State. The Grievant was represented by her legal counsel, Mr. Jonathan Stephens. Upon the conclusion of the hearing, the matter was taken under advisement, and the parties were directed to submit their Proposed Orders by April 22, 2013. The State’s document was filed on April 19, 2013. Without explanation, the Grievant failed to file a Proposed Order. The record was closed on April 22, 2013, and the case was declared ready for consideration.

This contested administrative proceeding was a fifth-step disciplinary hearing convened at the Grievant’s request, to consider the assessment of a three (3) day suspension by the Commissioner of the Department of Revenue (“the Department”) for “not following written procedures on the sale of temporary operation permits and repeatedly selling permits to consumers without obtaining the required documentation.” Upon consideration of the evidence and arguments, and the entire record, it is concluded that the Grievant engaged in the conduct, as charged, and that the appropriate disciplinary sanction is a three (3) day suspension. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT¹

1. The Grievant was employed by the State of Tennessee Department of Revenue in its Memphis Office. She was promoted to the position of Taxpayer Services Representative 1, on November 16, 2004. She was supervised by Efreem Simmons, Taxpayer Services Supervisor, who reported directly to Cathy Russell, Taxpayer Services Supervisor 2.

2. The duties of Taxpayer Services Rep 1 include the issuance of Temporary Operator Permits (TOPs”).

3. On June 28, 2006, the Department promulgated a policy entitled *Sale of Temporary Operator Permits* (“TOP Policy”). The Grievant received a copy of that policy.

4. According to the TOP Policy, TOPs are good for 30 days, and may be issued to individuals who have been unable to obtain a license plate for their motor vehicle for the following reasons:

- (a) The vehicle failed emissions testing;
- (b) The vehicle title is not available for registration;
- (c) The vehicle was purchased from an individual in a casual and isolated sale and will be transported to the county clerk’s office to be registered;
- (d) The vehicle has been purchased by a non-resident of Tennessee and will be transported to another state for registration; and
- (e) The vehicle cannot be timely registered due to a reasonable circumstance requiring temporary operation, while the vehicle is being prepared for proper registration.

5. As stipulated by the parties, the procedure for issuing a TOP, as set out in the TOP Policy, is as follows:

- (a) The applicant must complete a TOP application;
- (b) The applicant must provide satisfactory proof of ownership of the vehicle, such as a prior registration, dealer invoice or notarized bill of sale; and

¹ Prior to the hearing, the parties submitted a document containing their Joint Stipulation of Facts. These *Findings* are largely taken from those Stipulations, and were augmented, as warranted, with additional findings from the evidence that was admitted during the hearing.

- (c) The applicant must provide an acceptable form of identification, such as a driver's license or birth certificate.
- 6. The policy provides that only two (2) TOPs may be issued for a vehicle that has failed emissions testing.
- 7. The policy provides that three (3) TOPs may be issued for acceptable reasons other than "failed emissions testing," but that the issuing employee must obtain supervisor approval to issue a third TOP to any vehicle.
- 8. In order to determine how many TOPs have been issued to a particular vehicle, the Department created an electronic inventory spreadsheet showing the TOPs that have been issued. The policy requires that the employee check the spreadsheet before issuing permits.
- 9. On March 30, 2011, the Grievant again received the TOP Policy via electronic mail from Penny Webb, Taxpayer Services Manager.
- 10. On April 12, 2011, the Grievant's supervisor, Efreem Simmons instructed her via electronic mail to adhere to the TOP Policy, and in particular, to consult the inventory spreadsheet before issuing a TOP.
- 11. On April 15, 2011, the Grievant received a directive via electronic mail from Simmons instructing her not to reissue a TOP to an individual named Tanya Johnson. Simmons explained that Tanya Johnson has presented an altered title on her first application for a TOP, and that altered title should have been detected when it was presented.
- 12. On April 29, 2011, Simmons again reminded the Grievant via electronic mail to adhere to the TOP Policy.
- 13. On May 13, 2011, despite her supervisor's April 15 directive, the Grievant reissued a TOP to Tanya Johnson.

14. On May 17, 2011, the Grievant received a verbal warning from Simmons for violating the TOP Policy in connection with the issuance of the TOP to Tanya Johnson. The warning states that the Grievant exhibited unsatisfactory performance and improper conduct in issuing the TOP, and warns that further violation of the TOP Policy might lead to further discipline.

15. On June 2, 2011, the Grievant received a second verbal warning from Simmons for violation of the TOP Policy in connection with the issuance of a fourth TOP to an individual name DeMario Gillard. The warning states that the Grievant failed to check the inventory spreadsheet and failed to obtain manager approval for the issuance of the TOP, as required by the TOP Policy.

16. On August 30, 2011, the Grievant received a written warning from Simmons for violation of the TOP Policy in connection with the issuance of a third TOP to an individual named Maria Hernandez. The warning states that the Grievant failed to obtain adequate documentation regarding Hernandez' ownership of the vehicle by accepting a notarized statement from Ms. Hernandez' neighbor, which appeared to indicate that the vehicle had been stolen.

17. On September 26, 2011, the Grievant issued a TOP to an individual named James Williams, III, for an improper reason – a broken windshield – and without obtaining documentation of his proof of ownership prior to issuing the TOP. Specifically, Williams stated that he would return to the office with the proper documentation, but he never did.

18. On December 15, 2011, the Department issued a “due process” letter to the Grievant, informing her that a three-day suspension had been recommended due to her continued violations of the TOP Policy. At her request, a “due process” hearing was held on January 3, 2012, and the three-day suspension was subsequently imposed.

19. The Grievant requested a fourth-step hearing, which was held on April 2, 2012, and resulted in the Commissioner's April 19, 2012 letter, upholding the suspension. Her appeal of that decision resulted in the instant fifth-step hearing.

CONCLUSIONS OF LAW & ANALYSIS

1. The Tennessee Department of Revenue is the Petitioner in this matter, the party that initiated the proceedings, and as such, is assigned the “burden of proof.” The burden of proof is the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A “preponderance of the evidence” means the “greater weight of the evidence,” or “the more probable conclusion, based on the evidence presented.” The burden of proof is generally assigned to the party seeking to change the present state of affairs with regard to any issue. Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS. In the instant case, that means that the Department of Revenue must prove, by a preponderance of the evidence, that the Grievant repeatedly failed to follow the Department’s TOP Policy, and that a three-day suspension is the appropriate disciplinary response to her conduct.

2. The Department asserted that, through her negligence or incompetence, [See Rule 1120-10-.06(1)&(2), TENN. COMP. R. & REGS.] the Grievant failed to properly adhere to the Department’s *Sale of Temporary Operator Permits* Policy (“TOP Policy”). The Department generated that policy to define acceptable Departmental practices, and distributed it to its Taxpayer Services Representatives, including the Grievant, to ensure that those practices would be followed throughout its offices. It is concluded, as alleged by the Department, that the Grievant’s actions violated the Department’s established policy.

3. As stipulated by the parties, and further defined by testimony during the hearing, the Grievant violated the provisions of the TOP Policy on multiple occasions in less than five (5) months. For those violations, she received two (2) verbal warnings and a written warning, before receiving the three-day suspension that is the subject of this appeal.

4. During the hearing, Ms. Williamson attempted to excuse her improper actions by asserting that she was not provided the training necessary to competently perform her job duties with respect to issuing TOPs. However, that argument has no merit. The TOP

policy is straightforward and simple to understand. Furthermore, in the relatively rare case where a legitimate question could have arisen with respect to whether a TOP should have been issued, Mr. Simmons was available to answer any questions that the Grievant or the other Taxpayer Services Representatives might have had. Under these circumstances, no additional formal training was required with regard to TOP issuance.

5. A State employee may be disciplined for (1) causes relating to performance of duty, or (2) causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job. Rule 1120-10-.05, TENN. COMP. R. & REGS. (2011). "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. . . ." Rule 1120-10-.02, TENN. COMP. R. & REGS. [Underlined emphasis added.] Although the law prescribes implementation of progressive discipline for State employees, it also provides that disciplinary action must be administered at the step which is most appropriate for the misconduct. (See, *Tennessee Code Annotated* § 8-30-330; and Rule 1120-10-.07, TENN. COMP. R. & REGS.) As the courts have recognized in other cases dealing with these provisions,

. . . the key word in the statute is 'appropriate.' . . . (T)he 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. The supervisor has discretion to determine what punishment fits the offense.

Berning v. State, 996 S.W.2d 828, 830 (Tenn. App. 1999).

6. The Grievant had been employed by the State since 1984, without a serious incident recorded in her personnel file prior to the incidents giving rise to this series of disciplinary actions; that weighs in her favor. However, the Grievant's blatant disregard of the Department's TOP Policy, and her failure to respond to previous, less serious sanctions for similar conduct, justified the use of a three-day suspension through the Department's implementation of progressive discipline.

7. When the Commissioner considered the issue of punishment in this case, he had a wide range of options at his disposal. (See, Rule 1120-10-.07, TENN. COMP. R. & REGS.)

A three-day suspension is one of those options. Rule 1120-10-.07(4), TENN. COMP. R. & REGS. Without a doubt, the Grievant's conduct was unacceptable, and warranted a disciplinary sanction. The Grievant was employed as a Taxpayer Services Representative, a position of significant responsibility that requires adherence to a high standard of conduct, and requires the person in that position to perform her duties in a manner that instills confidence in her superiors that she will do the job properly without the need for direct and constant supervision. In this case, however, the Grievant proved herself incapable, through neglect or incompetence, of adhering to the requirements of a simple and straightforward written policy. Her failure, again and again, to conform to the policy's requirements, even after lesser sanctions were imposed, proved to her superiors that she could not be trusted to do her job without someone looking over her shoulder. That was unacceptable.

8. The issues presented for consideration in this case are (1) whether the Department has proven, by a preponderance of the evidence, that the Grievant failed to abide by the Department's Policies and Procedures; and (2) if so, whether the disciplinary sanction imposed by the Commissioner was appropriate. With respect to both issues, the Department has met its burden of proof. The evidence presented during the hearing amply supported the Department's allegations of wrongdoing, and established a compelling argument in favor of, at a minimum, a three-day suspension.

Accordingly, IT IS HEREBY DETERMINED AND ORDERED that the Tennessee Department of Revenue has met its burden of proof, and has established by a preponderance of the evidence that the Grievant, Damita Williamson, was negligent or incompetent in the performance of her job.

IT IS FURTHER DETERMINED AND ORDERED that the issuance of a three-day suspension, imposed as a disciplinary sanction, was appropriate, and warranted by her conduct, and is therefore Upheld.

AND, IT IS FINALLY ORDERED that the Grievant's appeal of the Commissioner's decision is hereby DISMISSED.

Entered and effective this _____ day of _____, 2013.

J. Randall LaFevor, Administrative Judge

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



Thomas G. Stovall, Director
Administrative Procedures Division