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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

TENNESSEE DEPARTMENT OF SAFETY,)	
)	
Petitioner,)	
)	
v.)	Docket No. 26.19-118103J
)	
ERIC WEINGEROFF,)	
Grievant.)	

INITIAL ORDER

This contested case came on to be heard on November 20, 2012, in Nashville, Tennessee before Administrative Judge Joyce Grimes Safley, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Civil Service Commission of Tennessee. Ms. Deborah Martin, Attorney for the Department of Safety, represented the Department of Safety or the State. The Grievant, Mr. Eric Weingeroff, was present and was represented by his attorney, Mr. Michael J. Flanagan, of the Nashville, Tennessee Bar.

The subject of this hearing was Grievant’s appeal of his twenty (20) day suspension without pay from the Department of Safety. Grievant was suspended for allegedly violating: (1) GENERAL ORDER 216-1, DEPARTMENT OF SAFETY; (2) RULE 1120-10-.05 (8), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED) — Gross misconduct or conduct unbecoming an employee in the State service; (3) RULE 1120-10-.05 (21), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED)---Betrayal of

confidential information; and (4) T.C.A. §10-7-504(a)(2)(A), CONFIDENTIAL RECORDS---EXCEPTIONS¹.

After consideration of the testimony and evidence presented, the arguments of counsel, and the entire record in this matter, it is determined that the Department of Safety failed to meet its burden of proof, by a preponderance of the evidence, that Grievant committed the acts as charged, or violated the Rules, General Order, or Statute as alleged. Accordingly, no discipline is warranted in this matter.

Accordingly, it is therefore **ORDERED** that Grievant's 20 day suspension without pay be **VACATED**. The Department is ordered to pay Grievant his lost wages.

¹ T.C.A. §10-7-504(a)(2)(A) sets forth the "exceptions" to T.C.A. §10-7-504 --- RECORDS OPEN TO PUBLIC INSPECTION. T.C.A. §10-7-504(a)(2)(A) provides the following exceptions to the "PUBLIC RECORDS ACT":

All investigative records of the Tennessee bureau of investigation, the office of inspector general, all criminal investigative files of the department of agriculture and the department of environment and conservation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, and all files of the handgun carry permit and driver license issuance divisions of the department of safety related to bogus handgun carry permits and bogus driver licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record; provided, however, that such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except to the governor and to those directly involved in the investigation of the specified agencies.

(Emphasis added.)

FINDINGS OF FACT

1. Grievant Eric Weingeroff has worked as a Tennessee Highway Patrol State Trooper with the Tennessee Department of Safety for twenty-seven (27) years.²

2. At some time during 2011, Grievant was required to go to an address to notify the next of kin that a traffic accident had resulted in a fatality.

3. Grievant, accompanied by two sheriff's deputies, went to the residence of the "next of kin."

4. The residence belonged to Danielle Elks, the Director of the Tennessee Alcoholic Beverage (ABC) Commission.

5. No one was at home when Grievant and the two deputies arrived. However, a door was ajar, and Grievant and the deputies entered the residence. Grievant explained, credibly, that he and the deputies found the following in the residence: one empty sandwich baggie, a rolled up pack of paper, and a couple of green "flakes" shown to him by the deputies. Grievant testified believably: "That was the extent of what was in the house."

² The Tennessee Highway Patrol (THP) is responsible for the enforcement of all federal and state laws relating to traffic. Serving the entire state of Tennessee with substations in each of its 95 counties, the THP has district headquarters in eight locations as well as scale houses in 5 additional locations. The Tennessee Highway Patrol is responsible for investigating accidents involving property damage, personal injury, and fatalities. When personal injury or fatal accidents involve drugs or alcohol, the THP is responsible for prosecution in the courts and working with the Attorney General's Office. The Highway Patrol is also active in criminal interdiction, which involves the suppression of narcotics on the roads, highways, and interstate systems in Tennessee. See <http://state.tn.us/safety/thp.htm>

6. Grievant reported the findings to his supervisor.

7. At some unspecified time after the “next-of-kin” notification, an unknown ABC agent and/or others allegedly notified either the Federal Bureau of Investigation (FBI) or the Tennessee Bureau of Investigation (TBI), and falsely reported that Grievant and the deputies had found scales, bags of marijuana, and a ledger at the ABC Director’s home. The unidentified ABC agent and/or others made unfounded allegations concerning “marijuana trade” at the Director of the ABC’s home.

8. The same unknown ABC agent or others reportedly criticized Grievant for failing to file some type of criminal charges against the widow of the man killed in the accident (who was also the Director of the state ABC.)

9. Based upon the unidentified ABC agent’s and/or others’ “report” to either the FBI or the TBI, Grievant was subjected to a TBI investigation. The TBI investigation was premised upon the unnamed ABC Agent and/or others making allegations that Grievant had found evidence of marijuana or drug activity and failed to initiate criminal proceedings. ³

10. Grievant was subjected to an interrogation by the TBI. Grievant was given a polygraph, “read his [Miranda] rights, and was interviewed at TBI for hours on two different occasions.” Grievant “passed” his polygraph test.

³The ABC Agent who allegedly filed the false report against Grievant was never identified, nor did the ABC agent testify at the hearing of this matter. No “statements” by the unidentified ABC agent or “others” were ever entered into evidence.

11. At the conclusion of the TBI's investigating the false allegations against Grievant (the "first TBI investigation"), the TBI "cleared" Grievant and "exonerated" him of any misconduct or failure to report "criminal activity".⁴

12. The Department of Safety called several witnesses during its case in chief. Importantly, NONE of the witnesses had personal information or first-hand knowledge of violations alleged in this civil service case. The Department's case rested upon speculation, innuendo, and hearsay.

13. Sergeant Chris Ray, Internal Investigations, Tennessee Highway Patrol, Department of Safety, testified on behalf of the Department. Sergeant Ray did not have personal knowledge of the events which formed the basis for this disciplinary proceeding.

14. Sergeant Ray was asked to investigate Grievant following the Department's being notified by the Tennessee Bureau of Investigation, on March 6, 2012, that the TBI was "conducting a criminal investigation into the release of documents to the media." The TBI's March, 2012 investigation shall be referred to as the "second TBI investigation."

15. The majority of Sergeant Ray's testimony was composed of hearsay remarks made by various individuals, including remarks attributed to District Attorney Dan Alsobrooks and Assistant District Attorney Ray Crouch.

⁴ It is noted that the TBI began its "first investigation" related to this matter in or around December 2011.

This evidence was excluded and was not considered on the basis that it was inadmissible hearsay.⁵

16. The cascade of events which occasioned this disciplinary action against Grievant began on March 5, 2012. On that date, a local television station ran a segment on its news program concerning ABC Director Danielle Elks. During the news segment, copies of statements from TBI's investigative file (from the "first TBI investigation") were shown on the television news program.⁶

17. Despite the various charges against Grievant in this matter, (alleged violations of Rules, a Statute, and a Department of Safety General Order), the REAL issue in this case is that the TBI was understandably upset because copies of file statements (from TBI's "first investigation" file) were released to the news media and were aired on television. Clearly, TBI management wanted *someone* to be held accountable for such documents being supplied to the news media.

18. Importantly, Sergeant Ray testified, credibly: *"There is no evidence that Trooper Weingeroff released the documents to the media or solicited anyone to do so."*

⁵ Statements made to Sergeant Ray by the Grievant were admitted as party-admissions exceptions to hearsay. It is noted that Sergeant Ray never reviewed the statements at issue which were contained in the TBI investigative file.

⁶ The "TBI Investigative file" referenced during the television news segment was the file which contained statements from an unknown ABC agent and others who had previously accused Grievant of failing to initiate criminal proceedings for finding "marijuana" at the ABC Director's home several months earlier.

19. Absolutely *no* evidence was presented at any time during the hearing of this matter that Trooper Weingeroff released the TBI investigative file “statements” (contained in TBI’s “first investigation file”) to the media or asked anyone else to release the documents to the media.⁷

20. Sergeant Ray admitted that no evidence existed that Grievant had allowed anyone to make copies of the TBI investigative file “statements”.⁸

21. Further, Sergeant Ray conceded that Grievant had the right, as a law enforcement officer, to review the TBI file and the documents at issue.

22. At all relevant times, Lieutenant Richard Cash was Grievant’s supervisor and was in Grievant’s chain of command. Despite numerous references to “Lieutenant Cash” by various witnesses during the hearing, Lieutenant Cash did not testify at the hearing.

23. At all applicable times, Grievant’s *immediate* supervisor was Sergeant J.D. Blackwell.

24. Curiously, Sergeant J.D. Blackwell did not testify for either the Department of Safety or Grievant at the hearing of this matter.

25. The oft-mentioned “Lieutenant Cash” directly supervised Sergeant Blackwell.

⁷ Actually, it defies logic to believe that Grievant would want false and damaging statements about himself to be released to the news media.

⁸ Despite insinuations that Grievant gave such confidential documents (from the “first TBI investigation”) to Lieutenant Richard Cash and *allowed* Lieutenant Cash (a supervising officer of Grievant’s) to copy such documents, no competent evidence was ever presented to support the contention that Grievant “allowed” or “encouraged” Lieutenant Cash to make copies of the TBI statements.

26. The State called Assistant District Attorney Ray Crouch as a witness. At all pertinent times, General Crouch worked in the District Attorney's Office for the 23rd Judicial District of Tennessee, in Charlotte, Dickson County, Tennessee.

27. General Crouch testified that he knew Grievant Weingeroff, and had worked closely with Grievant in the past.

28. On January 27, 2012, General Crouch entered the District Attorney's office in Charlotte, Tennessee and found Grievant writing notes on a legal pad while reviewing the "first TBI investigation" file.

29. General Crouch offered to make copies of the file for Grievant. He made copies of three statements that had been given to the TBI in the ABC Director Elks' matter (the "first TBI investigation"). General Crouch testified credibly that Grievant did not ask him to make any copies of the documents. Rather, General Crouch volunteered to make Grievant copies. The copies included statements from Sergeant Blackwell and Trooper Clodzer, in addition to the unnamed ABC agent.

30. General Crouch saw the "news stories" concerning the "first TBI investigation" and copies of "the first TBI investigation" statements which were televised. The reporter alleged that the Tennessee Highway Patrol and the District Attorney's office had "covered up" the discovery of marijuana at ABC

Director Elks' home. General Crouch testified that the news report was not accurate.⁹

31. It is important to note that in the "first TBI investigation", Grievant was considered a "criminal defendant", not a "witness". He was polygraphed, read his Miranda rights, and interviewed twice over alleged criminal allegations. It is also important to note that despite the TBI informing Grievant that a "criminal complaint" had been lodged against him during the "first TBI investigation", the TBI refused to tell Grievant what individual or individuals had filed or lodged the "complaint."

After the "first TBI "investigation" concluded and Grievant was "cleared", Grievant remained understandably upset and wanted to know who his accusers were. For this reason, Grievant asked the District Attorney's office to allow him to view the "first TBI investigation" file so that he could learn who supplied false information to the TBI. When Grievant went to the DA's office, Grievant was told him he "could take notes" and the DA left the office.

32. The Department of Safety alleged that Grievant was "untruthful" and made "inconsistent statements" based upon its interview of General Crouch. General Crouch rebutted such allegations.

33. General Crouch's testimony was consistent with Grievant's testimony, i.e., that Grievant related to General Crouch that Grievant had met with his supervisor, Lieutenant Cash, that Grievant told Lieutenant Cash

⁹ An earlier television news story reported an alleged "cover up" of the alleged marijuana found at the ABC director's home. The later March 5, 2012 news story televised copies of the "statements" taken by the TBI during the "first TBI investigation."

Grievant had been “cleared” of any wrongdoing by the TBI, and Grievant informed Lieutenant Cash that “someone” had made a false report to the TBI.

34. General Crouch contradicted allegations made by the Department of Safety that General Crouch told the TBI and Department investigators that he believed Grievant had “lied to him.” General Crouch also testified that he did not tell the TBI investigators or Sergeant Ray that he believed Grievant’s “credibility was damaged.” General Crouch clarified the remarks attributed to him by the TBI and Sergeant Ray. General Crouch noted that he had *actually* been asked by the TBI investigator that “*if hypothetically* Grievant had *confessed* that he had supplied the copies to the media, would that have damaged his credibility with the DA.”

35. General Crouch further testified that he believed the Grievant, and Grievant’s credibility with the DA *was not* damaged.

36. General Crouch testified, credibly, that Grievant has as much credibility with him or the DA’s office as he had before any of these events happened. He denied the Department of Safety’s assertions that Grievant’s “credibility” was damaged.

37. General Crouch related that sometime after the “first TBI investigation” began, the TBI brought the investigative file to the DA’s office. The DA talked to Grievant on the telephone and set up an appointment for Grievant to review the investigative file.

38. While Grievant was in the DA's office looking at file, Assistant DA Ray Crouch came into office (accompanied by TBI agent Joe Craig.) They had a brief conversation about the TBI file. Asst. DA Crouch then offered to make Grievant copies of the statements.

39. After Grievant obtained copies of the three (3) witness statements in the TBI file, Grievant went to discuss the contents of the file with his supervisor, Lieutenant Cash. Because most of allegations against Grievant seemed to have come from Grievant's immediate supervisor, J.D. Blackwell., Grievant consulted his next-line supervisor in the chain of command, Lieutenant Cash, about the situation.

40. Specifically, Grievant asked Lieutenant Cash for "advice" about the statements, and also asked Lieutenant Cash whether Grievant should contact the district Captain about the statements, which Grievant asserted were "defamatory" and not truthful or accurate statements.

41. Grievant testified, credibly, that the only person to whom he showed the TBI statement copies was his supervisor, Lieutenant Cash. Grievant testified, again credibly, that to his knowledge Lieutenant Cash did not make copies of the statements. Grievant did not ask anyone, including Lieutenant Cash, to provide copies of the TBI statements to the news media.

42. Following Grievant's consultation with Lieutenant Cash, Grievant requested a meeting with Tennessee Highway Patrol "management" because he believed that his sergeant had placed critical and inaccurate remarks about

Grievant into the TBI's investigative file. Understandably, Grievant was upset that individuals, including his sergeant, had placed information in TBI statements which Grievant believed to be inaccurate and damaging.

43. Major Rex Prince of Tennessee Highway Patrol testified that he is a Major in field operations for the West THP Bureau (Nashville, Lawrenceburg, Jackson and Memphis districts). Major Prince is "in the chain of command" for Trooper Weingeroff.

44. At Grievant's request, Major Prince, Captain Hutcherson, and Lieutenant Cash met with Grievant to address Grievant's concerns.

45. Grievant asked for Major Prince's "advice" at the meeting. Major Prince testified that he advised Grievant: "drop it, bury it...go about my business, I'd go on and do my job."

46. The Department now takes the position that Major Price "ordered" Grievant to "drop it." However, Major Prince's own testimony supports that Major Prince was merely giving Grievant his opinion or advice, and did not give Grievant a direct order.

47. Major Prince also testified that he had "no knowledge" regarding what person actually released the TBI reports to the media.

48. Captain James Hutcherson, THP's Captain over the Nashville District, acknowledged that Grievant went through chain of command when he discussed the "first TBI investigation" with Lieutenant Cash, and showed Lieutenant Cash the TBI "statements".

49. As Grievant's superior officer, Lieutenant Cash asked Captain Hutcherson to arrange the meeting with Grievant and other THP management to address Grievant's concerns regarding the false statements made against him. Captain Hutcherson agreed that Grievant had asked for the Nashville meeting because Grievant was concerned with his standing with his employer following the false allegations.

50. TBI Agent Russ Winkler testified on behalf of the Department of Safety at the hearing of this matter. TBI Agent Winkler interviewed Grievant during January, 2012 regarding the "complaints" or "allegations" (from the unnamed ABC employee and other unknown individuals) suggesting that Grievant found marijuana and drug paraphernalia at the ABC Director's residence when Grievant went to the residence to notify Mrs. Elks that her husband had been killed in a traffic accident.

51. Specifically, Agent Winkler testified: "[T]here was a question about he [Grievant] observed marijuana at the house or some residue of marijuana and some rolling papers at [the state official's] house."

52. On March 6, 2012, Agent Winkler interviewed Grievant a second time ("the second TBI investigation") for the purpose of determining whether Grievant had released copies of confidential file "statements" (from the "first TBI investigation") to the news media.

53. Grievant told Agent Winkler and THP Sergeant Ray during the "second TBI investigation" that he had shown the reports to his Lieutenant,

Richard Cash. Grievant also informed TBI Agent Winkler and Sergeant Ray that Lieutenant Cash had kept the reports in order to read them, and had returned them to Grievant a short time later.

54. During the “second TBI investigation”, Agent Winkler asked Grievant to make a call to Lieutenant Cash, and record the call. When Grievant refused to make a “recorded call” to Lieutenant Cash, Agent Winkler then asked Grievant not to call Lieutenant Cash or notify Lieutenant Cash that Agent Winkler and Sergeant Ray would be interviewing Lieutenant Cash.

55. Grievant went to his home, and retrieved the “statements” or “reports” for Agent Winkler and Sergeant Ray. Agent Winkler and Sergeant Ray then traveled to interview Lieutenant Cash.

56. Lieutenant Cash admitted to Agent Winkler and Sergeant Ray that Grievant had telephoned him to let him know Agent Winkler and Sergeant Ray were coming to see him.

57. After the second television news story (which televised the “first TBI investigation”) statements, disciplinary steps were instituted against Grievant by the Department for allegedly violating: (1) GENERAL ORDER 216-1, DEPARTMENT OF SAFETY; (2) RULE 1120-10-.05(8), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED) — Gross misconduct or conduct unbecoming an employee in the State service; (3) RULE 1120-10-.05 (21), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999,

REVISED)---Betrayal of confidential information; and (4) T.C.A. §10-7-504(a)(2)(A), CONFIDENTIAL RECORDS---EXCEPTIONS.

68. The event which initiated disciplinary charges and proceedings against Grievant began with the television news story which televised copies of TBI statements from “the first TBI investigation.”

69. After the news story aired, the Deputy Director of the TBI telephoned Colonel Trott and asked how copies of TBI’s documents “got on Channel 4.”

70. The instant investigation ensued, the TBI contacted Grievant and accused him of supplying the copies to the news media, the Grievant denied supplying copies of the “TBI’s first investigation” statements to the news media, and this matter culminated in Colonel Trott’s recommending and imposing a 20 day suspension for Grievant’s alleged “violations”.

71. Major Prince testified that he recommended Grievant’s “termination” based upon the *infractions listed on the internal investigative report. He had no personal knowledge of any of the alleged events.* Captain Hutcherson also testified that he recommended “termination” based upon the internal investigative report.

72. Colonel Tracy Trott, the commanding officer with THP, was presented with Grievant’s case for review and a determination. Col. Trott testified that he read the “TBI file” and the THP Internal investigative report. Col. Trott noted that the second TBI report “alleged criminal violations of the

protected records law.” Colonel Trott read the files and reviewed the recommendations from Major Prince and Captain Hutcherson for Grievant’s “termination.” Col. Trott also noted that the initial TBI report (from the “first TBI investigation”) had exonerated Trooper Weingeroff of any wrongdoing.

73. Colonel Trott ultimately recommended a 20 day suspension without pay for Grievant. Colonel Trott testified that he recommended the suspension “because the TBI report had not been released outside of law enforcement and *there was no proof that Trooper Weingeroff knew it was going to be released to the media.*”

74. Col. Trott conceded that he made his decision based upon “other sources”, not upon his own personal knowledge.

75. Several days after Grievant’s meeting with TBI Agent Winkler and Sergeant Ray, Captain Hutcherson informed Grievant that Grievant was being “involuntarily transferred” to the 7th District (Hickman County).

76. Grievant testified, credibly, that Captain Hutcherson stated: “You are being transferred for the good of the Department. You’ve done absolutely nothing wrong.”

77. A few days after the TBI’s “first investigation” statements were shown on the television news show, Grievant was transferred to the Driver’s License (DL) station in Franklin, Tennessee, and was given the reason that he was transferred “pending an internal investigation.”

78. After five weeks at the Franklin, Tennessee DL station, Grievant was transferred back to Hickman County, but was given a twenty (20) day suspension for being “untruthful”.

CONCLUSIONS OF LAW

1. The Department of Safety bears the burden of proof in this matter to show that Grievant Weingeroff committed the acts alleged by the Department of Safety. The Department must further show that such alleged acts violated (1) GENERAL ORDER 216-1, DEPARTMENT OF SAFETY; (2) RULE 1120-10-.05 (8), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED) — Gross misconduct or conduct unbecoming an employee in the State service; (3) RULE 1120-10-.05 (21), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED)---Betrayal of confidential information; and (4) T.C.A. §10-7-504(a)(2)(A), CONFIDENTIAL RECORDS---EXCEPTIONS.

2. If the Department meets its burden of proof in showing, by a preponderance of the evidence, that Grievant committed acts as charged, and further meets its burden of proof that such acts violated the cited Rules, General order, and Statute, the Department must then show that the discipline imposed was the appropriate discipline for any violations.

3. Rule 1120-10.02 of the RULES OF THE TENNESSEE DEPARTMENT OF PERSONNEL 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 employee serves at the pleasure of the appointing authority. (Emphasis added)

4. As defined by the UNIFORM RULES OF PROCEDURE FOR HEARING CONTESTED CASES BEFORE STATE ADMINISTRATIVE AGENCIES, RULE 1360-4-1-.02(7), “preponderance of the evidence” means the greater weight of evidence, or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.

5. Turning to the charges against Grievant, the Department argues that Grievant violated the following rules and regulations: (1) GENERAL ORDER 216-1, DEPARTMENT OF SAFETY --- “COMPLIMENTS, COMPLAINTS, AND DISCIPLINARY REGULATIONS; (2) RULE 1120-10-.05 (8), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED) — Gross misconduct or conduct unbecoming an employee in the State service; (3) RULE 1120-10-.05 (21), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED)---Betrayal of confidential information; and (4) T.C.A. §10-7-504(a)(2)(A), CONFIDENTIAL RECORDS---EXCEPTIONS.

6. The Department has failed to prove, by a preponderance of the evidence, that Grievant was guilty of “gross misconduct or conduct unbecoming an employee in the State service”. The Department has failed to prove, by a preponderance of the evidence, that Grievant was untruthful, or that Grievant refused to follow “orders”, and the Department has not proven that Grievant supplied “confidential” copies of TBI statements to the media.

Nor did the Department meet its burden of proof in showing that Grievant asked or encouraged someone else to supply TBI statements to the media. Finally, the Department failed to meet its burden of proof that Grievant violated GENERAL ORDER 216-1, DEPARTMENT OF SAFETY --- “COMPLIMENTS, COMPLAINTS, AND DISCIPLINARY REGULATIONS.”¹⁰

7. Rule 1120-1-.01(42) of the RULES OF THE DEPARTMENT OF PERSONNEL defines “gross misconduct” as “any job related conduct which may subject an employee to criminal prosecution.”

8. The evidence clearly supports that Grievant was “exonerated” of any allegations of failing to file a criminal complaint relating to a “next of kin notification of death” visit to the Alcoholic Beverage Commission Director’s home.

9. The Department presented no proof that Grievant violated any confidentiality rules or regulations, nor did the Department present any proof that Grievant violated any of the cited Rules, Regulations, or the General Order.

10. The Department has failed to meet its burden of proof that the Grievant was untruthful. The Department did not show that Grievant was instructed not to make copies of the TBI “investigative file” by District Attorney Dan Alsobrooks, as alleged. General Alsobrooks did not testify at the hearing.

¹⁰ GENERAL ORDER 216-1, DEPARTMENT OF SAFETY --- “COMPLIMENTS, COMPLAINTS, AND DISCIPLINARY REGULATIONS, consists of 23 type-written pages. In the interests of brevity, GENERAL ORDER 216-1 is not set forth in this Initial Order, but is incorporated by reference, as if set forth verbatim herein.

Grievant testified, credibly, that General Alsobrooks gave him permission to view the investigative file.

11. No one who testified on behalf of the Department of Safety had personal knowledge of the allegations against Grievant.

12. Sergeant Ray did not have personal knowledge of the events which formed the basis for this disciplinary proceeding. Rather, the Department of Safety was notified by the Tennessee Bureau of Investigation on March 6, 2012 that the TBI was “conducting a criminal investigation *into the release of documents to the media.*” Major Prince admitted that he recommended termination based upon the infractions listed on the internal investigative report. *He had no personal knowledge of any of the alleged events.* Col. Trott conceded that he made his decision to suspend Grievant based upon “other sources”, not on his personal knowledge, and Col. Trott further concluded that “the TBI report had not been released outside of law enforcement and there was no proof that Trooper Weingeroff knew it was going to be released to the media.”

13. Grievant’s testimony was credible. Importantly, *no witness rebutted Grievant’s testimony* regarding his review of the investigative file, his receipt of a copy of the three statements in the file, and his discussion of the statements with Lieutenant Cash.

14. No evidence of any kind was introduced that supported the contention that Grievant supplied confidential TBI records to the news media.

The Department failed to meet its burden of proof, by a preponderance of the evidence, that Grievant committed the acts as charged, or violated the Human Resources, General Order, or Statute as charged.

Accordingly, because the Department did not show, by a preponderance of the evidence, that Grievant committed the disciplinary offenses as charged, discipline is not appropriate, and Grievant's twenty day suspension is **SET ASIDE**. The Department of Safety is **ORDERED** to pay Grievant his lost wages, and to adjust any benefits which Grievant may have lost due to a twenty (20) day suspension without pay being imposed.

Grievant is the prevailing party in this case.

It is so ordered.

Entered and effective this _____ day of July, 2013.

Joyce Grimes Safley
Administrative Judge

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

A handwritten signature in cursive script that reads "J. Richard Collier".

J. Richard Collier, Director
Administrative Procedures Division