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**BEFORE THE CIVIL SERVICE COMMISSION
FOR THE STATE OF TENNESSEE**

**DEPARTMENT OF LABOR and
WORKFORCE DEVELOPMENT**

v.

**RICKEY YOUNG
Grievant**

DOCKET NO: 26.13-119703J

INITIAL ORDER

This matter was heard on April 4, 2013, before Leonard Pogue, Administrative Judge, sitting for the Tennessee Civil Service Commission. Charles Herrell represented the Department of Labor and Workforce Development (“Department”). Grievant Rickey Young, currently an unlicensed lawyer, represented himself. This matter became ready for consideration upon the submission of proposed findings of fact and conclusions of law (Department submitted proposed findings on July 18, 2013; Grievant did not submit proposed findings). The subject of the hearing was Grievant’s appeal of his termination by the Department. After consideration of the entire record in this matter, it is determined that the termination should be upheld. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Grievant was employed as a Hearing Officer II with the Department’s Appeals Tribunal. He is a law school graduate, has practiced law in Virginia and the military, but is not licensed to practice in Tennessee. Grievant began his employment with the Department in 2004 and it ended with his termination on November 29, 2012.

2. By letter of August 8, 2012, Commissioner Karla Davis notified Grievant of his termination, as recommended by Grievant's supervisor Fred Bell, and due process appeal rights.

3. On November 28, 2012, a Department representative conducted a Step IV Hearing. Commissioner Davis, by letter dated November 29, 2011, determined that there was sufficient evidence to support termination.

4. The grounds for termination were for violating Department of Human Resources Rule 1120-10-.06(1) inefficiency in the performance of duties; Rule 1120-10-06(2) incompetency in the performance of duties; Rule 1120-10-.06(3) negligence in the performance of duties; Rule 1120-10-06(21) refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination) and Rule 1120-10-.06(26) for the good of the service as outlined in T.C.A. § 8-30-316.

5. There was no proof presented of Grievant having received prior suspensions or written warnings. Grievant's supervisors did meet with him regarding his work performance and the Department's belief that Grievant needed to improve.

6. Within the Department the Division of Employment Security is responsible for administering unemployment benefits. An individual seeking benefits submits an application and a claim for unemployment benefits. The Agency then adjudicates the claim administratively and issues a decision which either grants or denies the benefits. The employer and claimant are notified and each has the right to appeal to the appeals tribunal. The hearings are typically conducted by telephone.

7. A Hearing Officer II conducts the hearings to determine if unemployment insurance benefits should or should not be granted. The hearing officer contacts the parties by telephone. When a party is not immediately available, the hearing officer typically allows a grace

period of 15 minutes and then attempts to reach the party again. Once the hearing commences, the hearing officer takes testimony, hear arguments of counsel (if counsel are present), and considers any submission of exhibits. Following the hearing, the hearing officer issues a written decision (usually the same day of the hearing) affirming, reversing or modifying the decision of the Agency.

8. John Trentes has served as a Hearing Officer III since 2010. In 2010 he along with Fred Bell and Sarah Dobbs were the Chief Hearing Officers for the State and supervisors for Hearing Officers II. Grievant was not in Mr. Trentes' region and not his primary supervisor. However, according to Mr. Trentis, the Hearing Officers III had "joint and severable responsibility" for all Hearing Officers II. Ms. Dobbs no longer works for the Department and lives out of state; at the time of the hearing, Mr. Bell had been promoted to Director of Appeals. Neither Ms. Dobbs nor Mr. Bell testified at the hearing.

9. The unemployment compensation program is a federal program that is administered at the state level. As such, the federal government has oversight with certain performance and quality assurance standards. Cases are randomly selected for review each quarter and scored based on federal guidelines. A state can be placed on probation (more scrutiny and more cases reviewed) for failing to meet the federal standards. The number of cases processed by the state is related to the funding received by the federal government.

10. According to Mr. Trentes, a supervisor's duty is to monitor the quality of work performed by the hearing officers. If there is a clearly anomalous decision resulting in a claimant being paid benefits, who through any later appeal would not be entitled to benefits, it is the supervisor's duty to prevent payment, at the earlier level. Hearing officers do enjoy a degree of independence in their decisions. Nevertheless, Mr. Trentes explained it is the Department's duty

to make sure that the law is being followed and applied correctly, and when obviously it is not, the Department has a duty to intervene. There were instances when Grievant's supervisors intervened when they felt Grievant had written unsupportable decisions. This intervention resulted in significant effort on the part of the supervisor. Further, in three cases involving the Trade Readjustment Act (TRA), the Commissioner of the Department took the rare step to intervene and assign the case to the Office of Administrative Review before the issuance of Grievant's decision. This was done because Grievant did not call a party (a state agency) who did not appear at the hearing and ruled against the agency. Grievant explained that in non-TRA cases he sometimes did not call a state agency/department if a representative was not present. Hearing Officers II have not been subject to discipline for failing to call a party.

11. The three cases involving the Trade Readjustment Act were cases which Grievant was not suppose to preside over as hearing officer. Mr. Trentes was of the opinion that Grievant should have notified his supervisor that the cases were on his docket and that Grievant wasn't authorized to hear them.

12. Grievant sometimes had problems responding in a timely fashion to his supervisors' queries when they had concerns regarding the legal correctness of his decisions. He testified that he did not always respond promptly because he did not understand why there was any objection to his decision. Grievant was previously warned about untimely communications with his supervisors. Also, there were occasions Grievant fell behind in issuing his decisions, even though Mr. Trentes indicated Hearing Officer II caseloads were manageable. Grievant explained that he would not "cut people off" during hearings which resulted in his cases taking longer and causing him delays.

13. Mr. Trentes noted that, to some extent, the problem areas with Grievant were sometimes issues with other hearing officers. Grievant's supervisors (Bell, Trentes, Dobbs) met with him on May 1, 2012 to discuss with him his performance issues. Ten areas of perceived deficiencies were discussed with Grievant. At the meeting Grievant indicated that he had been trained to hear Trade Readjustment Act cases. According to Mr. Trentes, following the meeting, there was little or no improvement in Grievant's job performance. Grievant considered the meeting a warning and testified that he was told that he wouldn't lose his job because of any past problems he may have had.

14. Mr. Trentes opined that Grievant expressed a bias in favor of claimants to the point of granting benefits when it was clearly contrary to the law. Grievant testified that he approached unemployment law based on the standard of liberally interpreting the law in favor of the claimant. According to Grievant, a previous Commissioner of the Department told hearing officers that more rulings should be made in favor of claimants. Grievant opined that if a hearing officer expressed opinions different from the supervisors then the hearing officer either quit or was fired. Grievant testified that he feels his termination was due to his rulings in two specific cases.

CONCLUSIONS OF LAW

1. The Department has the burden of proof, under Rule 1360-4-1-.02(7) of the Uniform Rules of Procedure for Hearing Cases before State Administrative Agencies, to show by a preponderance of the evidence that its decision to terminate Grievant was proper.

2. Tennessee Department of Human Resources Rule 1120-10-.06, EXAMPLES OF DISCIPLINARY OFFENSES, lists the following as examples of disciplinary offenses:

- (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).
- (26) For the good of the service as outlined in T.C.A. § 8-30-326.
- 3. Tennessee Department of Human Resources Rule 1120-10-.07, PROGRESSIVE

DISCIPLINARY ACTION, states in relevant part:

- (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
- (3) Written Warning
- (4) Suspension Without Pay
 - (a) After minimal due process is provided, a suspension without pay may be issued by the appointing authority for one (1) to thirty (30) days.
- (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.
- (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.

4. T.C.A. § 8-30-330, Progressive Discipline, states in relevant part:
 - (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 or poor performance may result in more severe discipline in accordance with subsection (a).

5. T.C.A. § 8-30-326, Dismissal, states in relevant part:

- (a) An appointing authority may dismiss any employee in the authority's division when the authority considers that the good of the service will be served thereby.
- (b) Whenever an employee is dismissed "for the good of the service," the notice of termination must outline in detail how the service will be benefited by such termination.

6. The nature of Grievant's job allows for a hearing officer to exercise discretion in making determinations and rulings relative to specific cases. However, this independence is not without some limitations; the law must be followed and there are standards to adhere to and meet. Grievant's supervisors found some instances where Grievant issued unsupportable decisions. Moreover, Mr. Trentes felt Grievant was so biased in favor of claimants that Grievant would grant benefits even when contrary to the law. Additionally, the duties of a hearing officer are not limited to making a decision or ruling relative to a particular case. Grievant presided over TRA cases though his supervisor noted that Grievant wasn't authorized to hear them. Also, Grievant had a pattern of not responding timely to his supervisors and falling behind in issuing his decisions. The Department identified improvement needed in Grievant's work and met with him to discuss ten areas of deficiencies. Following this, Grievant's performance issues did not abate or improve. The proof established that Grievant was inefficient, incompetent, and negligent

in the performance of his duties, as well as insubordinate, each a disciplinary offense pursuant to Tennessee Department of Human Resources Rule 1120-10-.06(1)(2)(3), and (21).

7. Having concluded that Grievant's conduct violated Rule 1120-10-.06(1)(2)(3) and (21), the remaining issue is a determination of the appropriate discipline. The proof did not establish that Grievant's conduct was egregious. However, Grievant's supervisors consistently had problems with Grievant's job performance. In an attempt to rectify the problems, Grievant and his supervisors met and Grievant was presented with a list of performance issues. Subsequent to this meeting, there was little or no improvement in Grievant's actions. Given Grievant's pattern of job performance problems and Grievant's failure to correct his performance, the most appropriate discipline is termination.

8. The Department has met its burden of proof and has established that each basis for termination (inefficiency, incompetence, and negligence in the performance of his duties, insubordination, and for the good of the service) was proper.

It is **ORDERED** that the decision by the Department of Labor and Workforce Development to terminate Grievant be **Upheld**.

This Initial Order entered this _____ day of September, 2013.

Leonard Pogue
Administrative Judge

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

J. Richard Collier, Director
Administrative Procedures Division