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October 2013

## Ross Jones vs. Dept. of Mental Health

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**BEFORE THE COMMISSIONER OF THE  
TENNESSEE CIVIL SERVICE COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>TENNESSEE DEPARTMENT OF MENTAL</b>	)	
<b>HEALTH AND SUBSTANCE ABUSE</b>	)	
<b>SERVICES,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 26.15-117215J</b>
	)	
<b>ROSS JONES,</b>	)	
	)	
<b>Grievant.</b>	)	

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**INITIAL ORDER**

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This matter came to be heard on June 28, 2013, before Marion P. Wall, Administrative Judge, Administrative Procedures Division, Office of the Secretary of State. Grievant, Mr. Ross Jones, was represented by Mr. Michael Freeman of the Nashville Bar. The Department of Mental Health and Substance Abuse (Department or State hereinafter) was represented by Mr. Nathan Mauer. The subject of the hearing was the Grievant’s appeal of his termination of employment for allegedly sexually harassing a co-worker. After consideration of the entire record and the arguments of counsel, it is determined that the Grievant’s termination should be **UPHELD**. This determination is based on the following Proposed Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. From December 3, 2007 to April 1, 2012, Ross Jones was employed by the TDMHSAS and worked at Middle Tennessee Mental Health Institute (hereafter “MTMHI”) as a Custodial Worker 1.

2. Mr. Jones' employment was terminated, effective April 1, 2012, for violating MTMHI Policy 0619.01, Workplace Harassment, for violating Tennessee Department of Human Resources (hereinafter "DOHR") Rules 1120-10-.05(6), Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees, and (11), Conduct unbecoming an employee in State service, and for the Good of the Service pursuant to Tenn. Code Ann. § 8-30-326. Mr. Jones first received notice of the dismissal decision on or about March 21, 2012. Mr. Jones timely appealed his dismissal.

3. The charge against Mr. Jones relates to his activities with Ms. Angela Baker. The proof, as accredited, establishes that Ms. Angela Baker was employed by Medical Staffing Network and worked as a Licensed Practical Nurse at MTMHI as a contract employee starting in the spring of 2011. Ms. Baker was assigned to a unit in April of 2011 where Ross Jones was then working as a custodial worker. When she began working as the new Med Nurse on the unit, Mr. Jones approached her and began asking her questions of a personal nature and expressing his interest in her. Ms. Baker told him that she did not wish to tell him about her personal life. Mr. Jones started asking her questions and making comments of a sexual or explicit nature. Among other things, Mr. Jones repeatedly asked Ms. Baker who she had recently had sex with and whether she would agree to have sex with him. Ms. Baker recalled that Mr. Jones often made references to his genital area and used explicit phrases when speaking with her. Ms. Baker also testified that Mr. Jones made comments about his "package" and about Ms. Baker's physical appearance, referring often to her breasts and buttocks. On one occasion when Mr. Jones approached Ms. Baker and put his hands on her shoulders, Ms. Baker told Mr. Jones to "get his hands off her" and not to touch her again. Mr. Jones responded by stating that Ms. Baker needed to "get laid", implying again that she should have sex with him. On all of these occasions, Ms.

Baker made it clear to Mr. Jones that his advances and comments were unwelcome. Ms. Baker went such lengths as to shut and lock the doors to the Med Room where she was assigned so as to avoid any contact with Mr. Jones.

4. Mr. Jones continued in his behavior towards Ms. Baker between April and October of 2011. Ms. Baker testified that while she never told Mr. Jones that she would report him prior to her complaint, she spoke with several co-workers about the situation. One such coworker was Roy Tillery, a psychiatric technician who worked at MTMHI during the same time period. Ms. Baker stated that in October of 2011 she felt that there was no alternative to reporting Mr. Jones for harassment, given that all other attempts of stopping his unwelcome advances and offensive comments had failed.

6. Mr. Roy Tillery works as a psychiatric technician at MTMHI, and worked in this same position throughout 2011. Mr. Tillery confirmed that Ms. Baker had approached him about Mr. Jones on at least one occasion. Mr. Tillery testified that Ms. Baker seemed concerned that no one would believe her. Mr. Tillery stated that he believed Mr. Jones had harassed Ms. Baker, as he had personally witnessed Mr. Jones make inappropriate and demeaning remarks about women on the unit. Mr. Tillery also stated that Mr. Jones expressed to him that he was interested in Ms. Baker in a sexual way, along with Mr. Jones' own supervisor, Ms. Lisa White. Mr. Tillery also stated that Mr. Jones asked him for Ms. Baker's personal telephone number, which he declined to provide. Mr. Tillery recalled that he advised Mr. Jones on numerous occasions not to pursue Ms. Baker and that his behavior was not appropriate. Mr. Tillery testified that Mr. Jones called him after MTMHI began investigating Ms. Baker's complaint against Mr. Jones, and accused him of lying to the MTMHI investigator, Ms. Barbara Petty. Mr. Tillery recalled that he told Mr. Jones that he had told the truth to the investigator. Mr. Tillery stated that Mr. Jones spoke

aggressively towards him on the phone. Mr. Tillery stated that Mr. Jones treated the allegations against him as a joke, and was not concerned with getting caught.

7. Ms. Brenda White works as a Psychiatric Technician at MTMHI and worked in this position throughout 2011. Ms. White filed a complaint against Mr. Ross Jones on May 26, 2011, alleging sexual harassment. Ms. White testified that the first occasion she recalled Mr. Jones acting inappropriately towards her was several months prior to her filing a complaint, when Mr. Jones passed her in the hallway and stated to her that she needed his “big dick” and made a gesture with his hands towards his genital area. Ms. White stated that following this incident Mr. Jones asked her out multiple times, but that she always declined. Ms. White stated she witnessed Mr. Jones say that he had a sexual relationship with Ms. White in the presence of another employee on at least one occasion. Ms. White denied ever having a relationship with Mr. Jones outside of work, including any sort of romantic or sexual relationship. On May 24, 2011, Mr. Jones approached Ms. White in the break room and told her that she needed to lie down. Ms. White stated that she asked Mr. Jones what he meant, and he stated again that she needed to lie down with him (Mr. Jones). Ms. White stated that Mr. Jones frequently made comments to her of a sexual nature, and she clearly expressed to him that his comments and advances were unwelcome. Following the incident on May 24, 2011, Ms. White reported Mr. Jones for sexual harassment.

8. Ms. Lisa White works as a Custodial Supervisor at MTMHI and worked in this position throughout 2011. Ms. White stated that on multiple occasions she asked Mr. Jones to stop making inappropriate comments to female employees and told him that his conduct was unacceptable, but that Mr. Jones disregarded her warnings and never appeared to be concerned about any consequences.

9. Barbara Petty works as an investigator for the Department of Mental Health and Substance Abuse Services, and she served as the Department's investigator for the two workplace harassment complaints filed against Ross Jones by Brenda White and Angela Baker. Ms. Petty testified that when investigating a complaint by an employee, she takes all available evidence into account, and conducts as many interviews as possible before coming to a conclusion about a complainant's allegations. Ms. Petty recalled that while investigating the complaints filed by Ms. Baker and Ms. White, she interviewed 23 different individuals, including the complainants themselves and Mr. Ross Jones. Ms. Petty testified that she interviewed Mr. Jones on two separate occasions after complaints were filed against him. On both occasions, Mr. Jones denied making any inappropriate remarks to or about Brenda White or Angela Baker. Ms. Petty stated that Mr. Jones also denied flirting or making sexual comments to his female coworkers, and that he stated that his mind was always on his work. Mr. Jones denied ever being suspended from work, and recalled only one disciplinary action taken against him, a statement which Ms. Petty knew to be false. Ms. Petty recalled that Mr. Jones claimed, at the time of the interview regarding Ms. Baker's complaint, that in recent months he intentionally distanced himself from Ms. Baker after being warned by a coworker not to associate with her. Ms. Petty testified that she observed a video of Mr. Jones from October 20, 2011, in which he attempted to approach Ms. Baker's work area on four different occasions over a span of 6 hours with no apparent work-related purpose.

10. Margie Dunn testified at the hearing that she currently serves as Director of Human Resources at MTMHI, and that she is familiar with the personnel record for Mr. Jones. Ms. Dunn confirmed that Mr. Jones was dismissed for violating MTMHI policy 0619.01 on Workplace Harassment, and DOHR Rules 1120-10-.05(6) Failure to maintain satisfactory and

harmonious working relationships with the public and fellow employees, and (11) Conduct unbecoming an employee in State service. According to Ms. Dunn, Mr. Jones was also dismissed for the “Good of the Service” in accordance with Tenn. Code Ann. § 8-30-326. Ms. Dunn testified that prior to his dismissal, the following disciplinary actions were taken against Mr. Jones:

(1) On February 11, 2010, Mr. Jones received a one-day suspension for misappropriation of state property or supplies after repeatedly entering the kitchen in the MTMHI Dietary Department and appropriating items therein without permission or approval;

(2) On April 11, 2011, Mr. Jones received a written warning for violating MTMHI Policy 0601.01—Time and Attendance, after leaving work before the end of his scheduled shift and failing to clock out; and

(3) On November 4, 2011, Mr. Jones received a written warning for violating MTMHI Policy 0619.01—Workplace Harassment, after making unwelcome comments of a sexual nature to another employee.

10(b). Ms. Dunn testified that based upon her knowledge of MTHMI Policies and DOHR Rules, the Department had not violated any law, rule or policy in dismissing Mr. Jones.

### **CONCLUSIONS OF LAW**

1. The Department bears the burden of proof in this matter to show, by a preponderance of the evidence, that the Grievant violated the Tennessee Department of Human Resources Rules (May 2011) or any other Department policies as set forth in the letter of termination. The Department also has the burden of proof to show, by a preponderance of the

evidence, that the discipline imposed was the appropriate discipline for any violation of such rules or policies.

2. Rule 1120-10-.01 of the Rules of the Tennessee Department of Human Resources (May 2011) provides as follows:

A career employee may be warned, suspended, demoted, or dismissed by the appointing authority whenever just or legal 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.

3. As defined by the Uniform Rules Of Procedure For Hearing Contested Cases Before State Administrative Agencies, Rule 1360-4-1-.02(7) (January 2010), “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.

4. The proof, as accredited, establishes that the Grievant did, in fact, sexually harass the Ms. Baker and Ms. White. While there was some discrepancy in the evidence, particularly with regard to an incident involving a smoke break in Mr. Jones’ car, Ms. Baker, Mr. Tillery, Ms. Brenda White, Ms. Lisa White, and Ms. Petty were credible witnesses and the undersigned finds that the conduct set forth above did occur as stated. Either all of the other witnesses were lying, or Mr. Jones was. When asked by the undersigned if he knew any reason these witnesses would lie about him, Mr. Jones had none. The undersigned carefully scrutinized the demeanor of the witnesses, and finds the witnesses against Mr. Jones to be credible. Mr. Jones’ testimony is specifically not believed.

5. The proof establishes that the Grievant violated the following policies and rules:

(1) MTMHI’s Policy 0619.01, Workplace Harassment;

(2) DOHR Rule 1120-10-.05(6) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees, and (11) Conduct unbecoming an employee in State service.

6. The Department's dismissal of Ross Jones was appropriate under the circumstances, and in light of Mr. Jones' history of DOHR and MTMHI Rule and Policy violations. Further, even were such violations not in the record, the actions of the Grievant in this case merit termination standing alone.

7. The employee presented no evidence that the agency violated a law, rule, or policy in issuing the discipline at hand.

It is therefore **ORDERED** that the termination of the Grievant be **UPHELD**.

This Initial Order entered and effective this \_\_\_\_\_ day of October, 2013

\_\_\_\_\_  
Marion P. Wall  
Administrative Judge

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



\_\_\_\_\_  
J. Richard Collier, Director  
Administrative Procedures Division