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BEFORE THE TENNESSEE CIVIL SERVICE COMMISION

TENNESSEE DEPARTMENT OF TRANSPORTATION,	)	
	)	**Case No. 26.22-117157J**
v.	)	
TERRIE GOBLE,	)	
Grievant.	)	

INITIAL ORDER

This matter was heard on August 29, 2013, before Judge Anthony Adgent, assigned by the Secretary of State, Administrative Procedures Division.

The subject of this proceeding is the termination of Grievant's employment with TDOT. After consideration of the entire record and the arguments of counsel, it is ORDERED that the termination be UPHELD. This determination is based upon the following Finding of Facts and Conclusions of Law.

FINDINGS OF FACT

1. Ms. Terrie Goble ("Grievant") was an employee of the Tennessee Department of Transportation ("TDOT") for approximately fifteen years. At the time of her termination on February 17, 2012, Grievant worked as a Transportation Technician 1 in construction engineering. Transcript of Level V Hearing on August 29, 2013.

2. The events that led to Grievant's termination took place primarily on February 10, 2012. Grievant was scheduled to attend a Tennessee State Employees Association ("TSEA") meeting that day, and she had been granted administrative leave to attend.

3. The evening of Ferbruary 9, 2012, Grievant took a hydrocodone around 7:00 PM and followed it by drinking a cocktail of Kahlua, milk, and ice. Grievant took a second hydrocodone at 4:30 AM the morning of February 10, 2012, followed by the remainder of her Kahlua cocktail from the night before around 6:00 AM with non-prescription pain medication. Grievant did not have a prescription for hydrocodone or any other prescription pain medication.

4. On February 10, 2012, Grievant received a phone call from a supervisor from the maintenance division, Wayne Overton, around 10:00 AM offering her the opportunity to assist the maintenance division that day. Mr. Overton is not Grievant's supervisor, and she does not work for the maintenance division. As such, her decision to return to work was voluntary. When she received the phone call from Mr. Overton, Grievant was near exit 40 on Interstate Highway 24 West on her way to the TSEA meeting. Grievant called Ms. Marian E. Morgan Goolsby, Transportation Technician 3 and office manager, to inform her that Grievant would be coming to work, in order for Ms. Morgan to change Grievant's time from administrative leave to normal duty upon Grievant's arrival around 12:30 PM. Grievant was slurring her words on the phone call with Ms. Morgan.

5. Upon returning to her workplace in Clarksville, Grievant was observed to be under the influence by several of her co-workers. She was initially observed by Mr. Isaiah Allen, Transportation Technician 3, and Mr. Louis Pisario, Operations Specialist 2 in a construction office conference room. Mr. Allen and Mr. Pisario were at lunch when Grievant approached them. Both men observed Grievant swaying, slurring her speech, making overt hand gestures, and smelling of alcohol.

6.
7. After Grievant exited the conference room, Mr. Allen and Mr. Pisario informed Ms. Morgan, the office manager, of their observations of Grievant. Ms. Morgan then contacted Mr. David Edmonson, Project Supervisor for the Clarksville Office, and informed him of the situation. Mr. Edmonson returned from the field and spoke with Mr. Allen, Mr. Pisario and Mr. Joe Willis, Operation Specialist. They then went to the maintenance office to speak with Grievant and question her about her condition.

8. Upon questioning by Mr. Edmonson about Grievant's condition, Grievant admitted that she had consumed alcohol that morning. During the interaction, Mr. Edmonson also observed Grievant to be under the influence. Mr. Edmonson testified that Grievant also told him that she had been taking oxycontin and hydrocodone in addition to her alcohol consumption.

9. Based on Grievant's admissions in conjunction with the observations of those involved, Mr. Edmonson contacted Mr. David Layhew, assistant Regional Director at the time, to move forward with the next step in Grievant's discipline. Mr. Edmonson testified that he instructed Grievant to find a way home and instructed Mr. Pisario to drive Grievant from the maintenance office to the construction office in Grievant's TDOT truck. Pursuant to TDOT Policy, TDOT management was not able to require Grievant to submit to a drug and alcohol test because her position did not require a Commercial Driver's License. Grievant also did

not have herself tested. Mr. Edmonson testified that he did not consider contacting state or local authorities because he did not want to cause Grievant any more trouble than that within which she was already involved.

10. While in transit from the maintenance to the construction office, Grievant received a phone call. Mr. Pisario testified that Grievant asked the individual to wait for her. When Mr. Pisario arrived at the construction office parking lot with Grievant in the passenger side of the truck Grievant was approached by a friend, Mr. Danny Bryant. Mr. Pisario testified that, when he asked Grievant what Mr. Bryant was doing there, Grievant replied that Mr. Bryant was bringing her moonshine. Grievant denies that the liquid was moonshine. Mr. Pisario also testified that Grievant refused to accept the moonshine by cracking her window and telling Mr. Bryant that she could not take it right now, but that he could take it to her house and give it to her later. Mr. Pisario offered to drive Grievant home, but she refused, and exited the premises in her personal vehicle.

11. TDOT terminated Grievant on February 17, 2012.

12. At the time of her termination, TDOT had been investigating other similar instances of misconduct by Grievant but had not yet finished its investigation. Each time the subject of substance abuse was broached with Grievant, she denied having a problem. Mr. Edmonson received a phone call from a concerned citizen, Ms. Richardson, in mid-December of 2011. Ms. Richardson stated that Grievant had visited the Clarksville Food Bank in her state truck and appeared to be intoxicated and behaving erratically. Grievant admitted to having been drinking the day of the Food Bank incident at a meeting with her supervisors.

13. Grievant was arrested on January 18, 2013, in Montgomery County, Tennessee and charged with the following offenses: DUI, Simple Possession, and violation of the open container law. Specifically, Grievant was found asleep in the driver's seat of her truck in the middle of the road with the motor running. Authorities found a large container half full of an alcoholic beverage with a straw, and they found two large bottles of liquor in the cab of the truck. Upon waking her, authorities determined Grievant was well over the legal limit for operation of a motor vehicle. They also discovered oxycodone pills in a metal can for which Grievant could not produce a prescription. Grievant eventually plead guilty to the DUI charge, and the others were dismissed. Grievant was placed on probation for eleven months and twenty-nine days, and her driver's license was suspended. Grievant testified that she will be on probation until March of 2014.

CONCLUSIONS OF LAW

1. TDOT bears the burden of proof in this case, and the standard of proof is preponderance of the evidence. TN Dept. of State, Admin. Proc. Div. Rule 1360-4-1-.02(3)(7).

2. "Preponderance of the evidence" simply means "the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion." Id.

3. 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. Former TN Dept. of Human Resources Rule 1120-10-.01.

4. The issue for determination is whether Grievant's conduct constitutes a violation of TDOT and DOHR policy that could justify termination.

5. Grievant was terminated for violating the following policies: Conduct unbecoming an employee in State service, Willful abuse or misappropriation of state funds, property, or equipment, acts that would endanger the lives and/or property of the employee and/or others, reporting to work under the influence of alcohol, or drugs, or partaking of such on the job, and TDOT's motor vehicle utilization policy. Exhibit 4.

6. Grievant admitted to her supervisor that she had consumed alcohol and prescription pain medication on both the night of February 9, 2012, and the morning of February 10, 2012. Specifically, Grievant took one hydrocodone the night before reporting to work with an alcoholic cocktail. She then took a second hydrocodone the morning she reported to work, and she finished what was left of her cocktail. Grievant eventually admitted that she did not have a prescription for her pain medication at the time. Mixing alcohol with prescription pain medication is known to have adverse side effects above and beyond either substance standing alone.

7. While Grievant was on administrative leave that day, she agreed that the reason for her leave, attendance at a TN State Employees Association meeting, was a work-related activity. Moreover, she was not required to report to work. Mr. Overton, who was not Grievant's supervisor and was not a part of the construction division for which Grievant worked, offered

Grievant the opportunity to assist the maintenance division in the making of brine to salt the roads. Grievant chose to report to work, and her time was changed to active duty upon her arrival.

8. Grievant was observed by a total of five TDOT co-workers and/or supervisors as having the appearance, smell, and disposition of someone who is under the influence of alcohol or illegal drugs. Testimony indicated that her speech was slurred, her gait was unsteady, her behavior was erratic, and she smelled of alcohol. Grievant attempted to explain her condition by stating that the chemicals she had been working with smelled like alcohol, and she stated her medical condition causes her to have an unsteady gait. However, Grievant was unable to produce any medical documentation to back up her claims. In addition, it stands to reason that other TDOT employees would not have noticed any abnormalities in Grievant if she often smelled of alcohol and often had an unsteady gait.

9. Testimony also indicated that Grievant asked a friend to bring her moonshine while being transported from the maintenance to the construction office. Grievant claims she did not make this statement.

10. Grievant demonstrated a penchant for untruthfulness during the hearing. She initially insisted that she had a prescription for the prescription pain medication she had taken on February 9 and 10, 2012. Only after her prior testimony under oath was presented to her did she admit that she did not in fact have a prescription for oxycodone or oxycontin. Because of her untruthfulness, it is difficult to accept her assertions as true without supporting evidence.

11. It was also discovered that Grievant has had other past instances in which she was observed to be under the influence while on duty. TDOT even received a telephone call from a concerned citizen in December of 2011 that had observed Grievant to be under the influence at a local Food Bank while on the clock and using her State vehicle. Grievant had a meeting regarding this incident and admitted to having been drinking the day of the Food Bank incident. While it was under investigation, TDOT had not yet handed down any official discipline for this incident by February 10, 2012. Grievant's supervisors offered her the opportunity to attend addiction counseling on several occasions, but Grievant declined, stating that she did not have a problem.

12. It is clear that Grievant does in fact have a problem with alcohol and prescription drug abuse. Her arrest on January 18, 2013, and subsequent guilty plea on the charge of DUI further confirms this to be true. The weight of the evidence points to no other conclusion.

13. Given the observations of Grievant by other TDOT employees, the circumstances of her past behavior and her open admission to having mixed alcohol and prescription pain medication

the night before and the day of the events in question, TDOT's decision not to contact local authorities was appropriate. TDOT even offered Grievant a ride home, but she refused. TDOT had no legal authority to detain Grievant at the Clarksville office.

14. Grievant produced no witnesses that observed her at the Clarksville office and that contradicted the testimony of TDOT employees that she was under the influence on February 10, 2012.

15. TDOT has met its burden of proof in this case. It is more likely than not, in fact highly likely, that Grievant reported to work under the influence on February 10, 2012. As such, Grievant was in violation of all five policies listed on her termination letter. By her own admission, Grievant ingested unauthorized prescription pain medications on two occasions and drank an alcoholic cocktail within approximately fourteen hours of driving to a work-related activity and within seventeen hours of reporting to work. There is no other logical conclusion than that of Grievant's being under the influence on the job. Given the safety concerns to TDOT and the public at large, termination was the proper course of action in this case.

Based upon all of the above, it is DETERMINED that the termination of Grievant is reasonable and appropriate, and therefore, it is ORDERED that termination of Grievant from her employment with the Tennessee Department of Transportation be UPHELD.

SUBMITTED this 4th day of November, 2013.

TENNESSEE DEPARTMENT OF TRANSPORTATION

BY: _____

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have this day forwarded a true and correct copy of the foregoing by hand delivery to the Administrative Procedures Division, 312 Rosa L. Parks Avenue, Snodgrass Tower, 8th floor, Nashville, Tennessee 37243, and to all parties at interest, or to counsel for all parties at interest, via U.S. Mail, on this the 4th day of November, 2013.

_____
Michael Begley

SENT TO:

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