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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

**TENNESSEE DEPARTMENT OF
HEALTH,**

Respondent

v.

HARDIN ANDERSON HUTSELL,

Grievant

Docket No. 26.17-117413J

INITIAL ORDER

This matter came to be heard on July 24, 2013, before Rob Wilson, Administrative Judge, assigned by the Administrative Procedures Division, Office of the Secretary of State, sitting for the Tennessee Civil Service Commission in Nashville, Tennessee. The Department was represented by Jane W. Young, General Counsel and Sarah Yusuf, Assistant General Counsel. Mr. Hardin Anderson Hutsell (hereinafter "Grievant") was present and represented by his attorneys, Mr. Allen Woods and Mr. Jerry Estes. The matter became ready for consideration on October 4, 2013, upon the submission of proposed findings of fact and conclusions of law.

Grievant was employed as County Director for the Meigs County Health Department and was terminated from employment by the Department, based on the following violations of Tennessee Department of Human Services Rules: (5) careless, negligent, or improper use of state property or equipment, (6) failure to maintain

satisfactory and harmonious working relationships with fellow employees, (11) conduct unbecoming an employee in state service, and (27) for the good of the service. *See* Tenn. Comp. R. & Reg. 1120-10-.05.¹ Grievant filed timely appeals of this determination. This hearing constituted Grievant's Step V hearing before the Civil Service Commission.

After due consideration of the evidence and the record as a whole, it is **DETERMINED** that Grievant's termination was proven to be appropriate by a preponderance of the evidence and should therefore be **UPHELD**. This decision is based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Grievant was employed by the Department in a dual role as an Environmental Health Specialist and as County Director of the Meigs County Health Department for thirteen years. Grievant held a supervisory position in his role as County Director of the Meigs County Health Department.

2. In August of 2010, Ms. Sky Creasman, an employee at the Meigs County Health Department, filed a workplace harassment complaint alleging that Grievant had made sexually suggestive comments to her and other employees.

3. The Department conducted an investigation of Ms. Creasman's complaint. Three other employees corroborated her allegations.

4. The Department's investigation determined that Ms. Creasman's complaints were substantiated. Consequently, the Department delivered a letter to Grievant on

¹ This proceeding arose prior to the adoption of the TEAM Act, Tenn. Code Ann. §§ 8-30-101 – 8-30-407 . Accordingly, it is governed by the former statutes, repealed in 2012.

October 25, 2010 informing him that he would be suspended for ten days and he would be relieved of his responsibilities as County Director for Meigs County. Grievant was permanently reassigned to work as an Environmental Specialist 4 in Bradley County.

5. Within two days of receiving notice of his suspension, Grievant called Ms. Creasman's husband's place of work and attempted to have him fired from his job at Cleveland Utilities. Grievant also followed Ms. Creasman around town to the point she became frightened and filed a report with the Decatur Police Department on November 15, 2010.

6. Grievant appealed his ten-day suspension through the Department of Human Resources employee grievance procedure. Ultimately, Susan Cooper, former Commissioner of Health reduced the suspension to a written warning. Grievant was also reinstated as County Director Meigs County effective May 16, 2011.

7. After learning that Grievant would be restored to his position as Director of the Meigs County Health Department, three employees at the Meigs County Health Department, Sky Creasman, Terra Gott, and Ashley Davis all resigned from their positions. Each employee wrote a resignation letter stating that they were discouraged by the Department's decision to reinstate Grievant and feared that they would be retaliated against once Grievant resumed his position as County Director.

8. On May 16, 2011, Grievant received the written warning. Members of Department management met with Grievant to outline their expectations for his behavior going forward and instructed him that further incidents of harassment, inappropriate behavior, or retaliation against employees would not be tolerated. Grievant attempted to

appeal the written warning to Step V, but his appeal was dismissed on the basis that written warnings are not grievable to Step V pursuant to Tenn. Comp. R. & Regs. 1120-11-.07(6) (repealed in 2012).

9. On June 27, 2011, approximately one month after receiving the written warning, Grievant sent his supervisor, Mr. Glenn Czarnecki, Regional Director of the Southeast Region², a text message containing a picture of woman wearing a bikini. Grievant initially denied knowing the identity of the woman in the picture, but later confirmed it was one of his subordinate employees. Grievant then wrote a letter of apology to Mr. Czarnecki.

10. On December 22, 2011, management from the Department received a workplace harassment complaint from an employee, Natalie Fernandez, who served as a part-time interpreter for McMinn County and Meigs County. Ms. Fernandez stated that Grievant made several inappropriate phone calls to her personal cell phone, followed her to her car, and stared at her inappropriately while she was working.

11. Ms. Fernandez stated that during one phone call, Grievant asked her if she was "bold" because he liked people that worked for him to be bold. On another call, Grievant asked if Ms. Fernandez knew anyone who could clean his house. When she responded that she had a friend who cleaned houses, Grievant inquired about her friend's marital status and whether she had children. When Ms. Fernandez said that her friend was married and had a child, Grievant responded "that won't work for me."

² The Department is divided into regional offices for management purposes. Each region employs a director who serves as a supervisor to the directors of the county health departments located within the region. The Meigs County Health Department where Grievant was employed is located within the Southeast Region.

12. During yet another call, Grievant asked if Ms. Fernandez could come over to clean his house because he was all alone at home. Ms. Fernandez refused, told him "I'm not that type of person" and hung up the phone.

13. Grievant continued to ask Ms. Fernandez if she knew someone who could clean his house. During one occasion, he followed Ms. Fernandez to her car in the staff parking lot to ask if she had found someone to clean his house. When Ms. Fernandez replied that she did not know anyone, he replied, "Well, I'll ask you again tomorrow morning."

14. Grievant began to ask Ms. Fernandez if she could work after hours or work longer hours at the Meigs County Health Department. Ms. Fernandez testified that these conversations made her uncomfortable.

15. When Department management received Ms. Fernandez's complaint, Grievant was placed on paid administrative leave while Ms. Fernandez's complaint was investigated.

16. In 1999, Grievant signed the Department's Computer Access Security Agreement which provides that employees "shall be accountable for and accept full responsibility for all transactions performed using [their] computer access codes" and that employees shall use "computer resources only for authorized State business." Grievant also signed an Acceptable Use Policy stating that "users should have no expectation of privacy," and communications made through State computers "may be examined by management for any reason, including but not limited to, security and/or employee conduct."

17. The Department's Office of Internal Audit commenced their investigation on January 17, 2012. Additionally, the Department's Office of Information and Technology Services (hereinafter "OITS") performed an audit of Grievant's state-owned computer to determine if Grievant had violated state policy regarding use of this equipment.

18. On February 2, 2012, OITS released a report stating that Grievant's state email account contained numerous messages from foreign dating services including "Chnlove Notifications," "iDateAsia Weekly Updates," and "Charming Date Notifications." During his deposition, Grievant confirmed that he had been contacting multiple women through Chinese dating sites after hours on his state computer.

19. The OITS review of Grievant's hard drive also found several hard copies of e-mails with sexually explicit language and several deleted files. The Tennessee Comptroller's Office was asked to analyze the contents of the deleted files. Their report indicated that Grievant's browsing history showed repeated visits to Chnlove.com and his hard drive contained various pictures of Asian women from the aforementioned website.

20. At all times relevant, the Department operated pursuant to a Workplace Discrimination and Harassment Policy which specifically provides that "sexual innuendos, teasing and other sexual talk such as jokes, personal inquiries, [and] persistent unwanted courting" are prohibited behavior. The policy also states that a hostile work environment may "be created by innuendoes, touching, electronic communications or other conduct" and warns that any employee who engages in conduct that violates the policy will be subject to corrective action "up to and including termination."

21. After management received the results of the investigation, it determined that Grievant should be terminated from employment. Dr. David Reagan, Chief Medical Officer, for the State of Tennessee and a senior executive with the Department of Health participated in discussions about whether Grievant should be terminated. Dr. Reagan testified that Grievant's conduct towards subordinate employees created a hostile work environment and could not be tolerated in the workplace.

22. Dr. John Dreyzehner, Commissioner, terminated Grievant from his position as County Director for the Meigs County Health Department on March 6, 2012.

RELEVANT LEGAL AUTHORITY

1. Tenn. Code Ann. §8-30-326 Dismissal.

(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.

2. Department of Human Resources Rule 1120-10-.03 Examples of

Disciplinary Offenses:

- (5) Careless, negligent, or improper use of state property or equipment;
- (6) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees;
- (11) Conduct unbecoming an employee in state service;
- (27) For the good of the service.

CONCLUSIONS OF LAW AND ANALYSIS

1. This matter is properly before the Commission, and all parties have received proper notice of this proceeding and been provided an opportunity to be heard on the issues presented.

2. The Department has carried its burden of proof by a preponderance of the evidence that the Grievant's conduct constituted violations of the rules set forth above.

3. The preponderance of the evidence supports the conclusion that Grievant repeatedly harassed and retaliated against employees under his supervision.

4. This conduct is especially egregious under the circumstances of this case, in that Grievant was previously warned that continued harassment and retaliation could result in his termination from employment.

5. Moreover, the credibility of the proof is bolstered by the evidence introduced showing that three female employees under Grievant's supervision resigned rather than work under his supervision due to his actions and their fear of retaliation.

6. The Department has also met its burden to prove that Grievant has used his state issued computer for improper purposes. His state issued computer contained sexually explicit correspondence that is inappropriate and unbecoming of an employee in State service.

Based upon the foregoing it is hereby **ORDERED** that the Grievant's termination is **UPHELD**.

This Initial Order entered and effective this _____ day of _____ 2014.

Rob Wilson
Administrative Judge

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

J. Richard Collier

J. Richard Collier, Director
Administrative Procedures Division