2-16-2005

GEORGE F. MACK

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BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

IN THE MATTER OF:

GEORGE F. MACK

DOCKET NO: 26.43-079736J

INITIAL ORDER

This matter was heard on February 16, 2005, in Dandridge, Tennessee, before Bettye Springfield, Administrative Judge, assigned by the Secretary of State, and sitting for the Tennessee Civil Service Commission. Dana Garner, Assistant General Counsel for the Department of Children’s Services, represented the State. The Grievant, George F. Mack, represented himself.

The subject of this hearing is the Grievant’s appeal of his termination by the Department of Children’s Services (“Department” or “DCS”), for violation of Department of Personnel Rules. After consideration of the evidence adduced at the hearing, argument, and the record, it is determined that the appropriate discipline in this matter is that the Grievant be TERMINATED. This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Grievant, George F. Mack, was employed with the Department of Children’s Services as a shift supervisor at Mountain View Youth Development Center (“Mountain View”). The Grievant was terminated from his employment effective May 19, 2005. The Grievant had been employed with Mountain View for nine (9) years.
2. On January 10, 2005, Terra Ray, a Children Services Officer (CSO) with Mountain View, filed an employee grievance accusing the Grievant of sexual harassment, between July 2004 and January 2005.

3. Shortly after Ray was hired in July 2004, the Grievant would come by her unit, while conducting unit tours, and ask her to go out with him. The Grievant stated, “I am not hitting on you or anything like that because people have claimed sexual harassment before and we should get together and see how it goes.” While making this comment, the Grievant would rub his hands on Ray’s shoulders. The remarks and touching occurred almost daily, and Ray handled it by “laughing it off.” Grievant was Ray’s supervisor at the time of these incidents.

4. On January 9, 2005, while Ray was on her break, the Grievant asked if he could see her nipple piercing. Ray and co-worker Christa Rogers had apparently had their breasts pierced the previous day. According to Ray’s statement, the Grievant was having a sexual relationship with Rogers and Rogers had told Grievant about the breast piercing. Grievant testified that Ray told him that her breasts were sore because she had just had them pierced.

5. Sometime between 2001 and 2004, the Grievant showed nude photographs of himself and an unidentified female to several female employees on the second shift. The Grievant was supervisor of second shift and the only management on duty during most of the time. One photograph showed the Grievant nude in a frontal pose; another photograph showed a female performing fellatio on the nude Grievant; and two photographs were of a nude female masturbating while lying on the floor.

6. All four photographs were seized from the Grievant’s locker, after he had initially denied having any nude pictures at work. The Grievant then admitted that he had brought the pictures to work and showed them to male employees, as “bragging rights” and because it was
“just what men do.” He did not “think” that he showed them to any females, but several female employees accurately described the photographs in question.

7. There were rumors among the employees of the Grievant’s penchant for sexual harassment at Mountain View. While some of the female staff did not find Grievant’s behavior offensive, others were offended by his conduct. One lieutenant and a training coordinator cautioned Ray’s orientation group that they should report any problems with Lieutenant Mack.

8. Grievant disputes the basis for the sexual harassment charge brought by Ray. He suggests that Ray filed the complaint after he counseled her about her rumored sexual relationship with a student at the facility. Ray’s complaint and the investigation into her relationship with a student occurred around the same time.

9. Ray was terminated from her employment with Mountain View for having an inappropriate relationship with a student. She did not testify at the hearing.

10. Gary Morris, Superintendent at Mountain View, spoke with the Grievant on a number of occasions about the rumors of his reputation/relationship with several of the female staff. Morris warned the Grievant of the potential consequences of his continued involvement with staff.

11. The Grievant was terminated for violation of the following Tennessee Department of Personnel (TDOP) rules as set out below: Rule 1120-10-.06 (4) Failure to maintain satisfactory and harmonious working relationships with fellow employees; (8) Conduct unbecoming an employee in State service; (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department, or any other segment of the State service; (24) For the good of the service; and the Department’s Policy 4.20 governing sexual harassment.
12. Prior to his termination, the Grievant had received the following disciplinary actions:

   a) May 15, 2001 - Written Warning, Sexual Harassment, for inappropriate behavior toward several female staff, including asking, “Do you mess around?” He was required to attend training on sexual harassment and advised that further inappropriate behavior may result in termination.

   b) July 16, 2003 - Written Warning, Negligence, failure to report incident of student’s attempted suicide.

   c) September 2, 2003 - One Day Suspension, for making a false logbook entry regarding properly securing all perimeter checks.

CONCLUSIONS OF LAW

1. Tennessee Department of Personnel Policy (TDOP) No. 1120-10-.06, lists causes for disciplinary actions, which include: (4) Failure to maintain satisfactory and harmonious working relationships with fellow employees; (8) Conduct unbecoming an employee in State service; (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department, or any other segment of the State service; and (24) For the good of the service.

2. Pursuant to Tenn. Code Ann. §8-30-201 (a), the State of Tennessee established for its employees a system of personnel administration that governs the removal, discipline and other incidents of state employment. Section 8-30-330 provides, in pertinent part, that discipline imposed on state employees must be progressive:

   (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).

3. The State of Tennessee – Department of Children’s Services Sexual Harassment Policy states, in pertinent part:

   I. Policy
   It is the policy of the Department of Children’s Services to provide an environment free of sexual harassment.

   II. Definitions
   1. Sexual harassment is a violation of Title VII of the Civil Rights Act of 1964 and it is against the policies of the State of Tennessee Department of Personnel for any employee, male or female, to sexually harass another employee by:

      a. Making un-welcomed sexual advances or requests for sexual favors or other verbal or physical conduct of a sexual nature as a condition of employment, or continued employment, or

      c. Creating an intimidating, hostile or offensive working environment by such conduct.

   2. Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive, that fails to respect the rights of others, that lowers morale and that therefore interferes with our work effectiveness. Sexual harassment may take different forms. One specific form is the demand for sexual favors. Other forms of harassment include:

      • Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, threats.
      • Non-Verbal: Sexually suggestive objects or pictures, commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures [emphasis added].
      • Physical: Unwanted physical contact, including touching, pinching, brushing the body, coerced sexual intercourse, assault [emphasis added].

   4. The Department’s Policy on Sexual Harassment provides, regarding disciplinary action:

      If the investigation reveals that the complaint is valid, prompt attention and disciplinary action designed to stop the
harassment immediately and to prevent its recurrence shall be taken …. Based on the seriousness of the offense, such action may include but is not limited to verbal or written reprimand, suspension, demotion, or termination [emphasis added].

5. The Department of Children’s Services terminated the Grievant for violation of TDOP policies and its Sexual Harassment policy following an internal investigation of a complaint of sexual harassment. The evidence established that, since 2001, the Grievant has had a history of asking female staff on dates, flirting, and engaging in inappropriate comments, touching, relationships, and other inappropriate behavior with female staff.

6. The fact that Lieutenant George Mack brought nude photographs of himself to work and showed them to other employees is made even more egregious because, while he was showing his nude pictures to other employees, the Grievant was the supervisor and, most of the time, the only management on duty. As the supervisor, the Grievant was the person responsible for setting the appropriate work climate, and should be held to a higher standard of behavior than his subordinates. Instead, he engaged in behavior that lowered morale and interfered with work effectiveness.

7. The Grievant admitted that he brought nude photographs of himself to work and showed them to male employees as “bragging rights” and because it was “just what men do.” The fact that several female employees were able to accurately describe these photographs leaves little doubt that they also viewed the photographs. The Grievant’s admission regarding these pornographic photographs is incredible and, moreover, demonstrates his inability to comprehend the inappropriateness of his behavior. Although he was previously required to attend sexual harassment training, the Grievant clearly has yet to comprehend the extent to which his conduct created an intimidating, hostile, and offensive work environment.
8. The Department was aware of the Grievant’s continued advances and otherwise inappropriate behavior toward female staff, as evinced by the warning during the July 2005 employee orientation. Also noted is the fact that Terra Ray, the employee who filed the sexual harassment complaint against the Grievant, was terminated for having an inappropriate relationship with a student. However, such facts do not absolve the Grievant for failing to comply with the Department’s sexual harassment policy.

9. The State proved, by a preponderance of the evidence, that the Grievant failed to maintain satisfactory and harmonious working relationships with fellow employees, engaged in conduct unbecoming an employee in State service, participated in actions that seriously disrupted or disturbed the normal operation of the institution, and violated the Department’s Sexual Harassment policy.

10. An employee’s prior conduct, both good and bad, along with his entire work history, can be considered when determining what the appropriate disciplinary action should be in a particular case. *Kelly v. Tennessee Civil Service Commission*, 1999 WL 1072566 (Tenn. Ct. App. 1999).

11. Based on the foregoing, it is concluded that TERMINATION of the Grievant’s employment is appropriate.

12. It is so ORDERED.

Entered and effective this 17th day of May 2006.

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Bettye Springfield
Administrative Judge
Filed in the Administrative Procedures Division, Office of the Secretary of State, this 17th day of May 2006.

Charles C. Sullivan II, Director
Administrative Procedures Division