6-13-2011

METROPOLITAN NASHVILLE POLICE DEPARTMENT, Petitioner, vs. LAURIE FLEMING Appellant

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions
Part of the Administrative Law Commons

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov
BEFORE THE CIVIL SERVICE COMMISSION
OF THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY

IN THE MATTER OF:               )
) DOCKET NO. 43.02-107616J
METROPOLITAN NASHVILLE          )
POLICE DEPARTMENT               )
Petitioner                      )
v.                              )
Laurie Fleming                  )
   Appellant                    )

ORDER

This matter came to be heard on June 13, 2011, before Thomas G. Stovall, Administrative Judge, assigned by the Secretary of State, and sitting for the Metropolitan Civil Service Commission in Nashville, Tennessee. Ms. Jennifer Cavanaugh, Assistant Metropolitan Attorney, represented the Metropolitan Nashville Police Department (MNPD). The Appellant, Laurie Fleming, was present and represented by counsel, Mr. Adam W. Parrish of Lebanon, Tennessee. This matter became ready for consideration on August 19, 2011, upon submission of the Appellant’s proposed findings of fact and conclusions of law.

The subject of this hearing was the Appellant’s appeal of the termination of her employment and one (1) day suspension for conduct in violation of MNPD General Orders. After consideration of the record in this matter, it is determined that the Appellant should be REINSTATED to her former position with a three (3) day
suspension. This decision is based upon the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. The Appellant was a civilian employee of the MNPD for over 20 years with no history of prior discipline. At the time of her termination, she was employed as a Personal Identification Specialist II. The Appellant was a senior employee working in the section of MNPD that identified and matched fingerprints.

2. On October 13, 2009, the Appellant struck the bumper of an MNPD vehicle while parking her vehicle in the Criminal Justice Center parking garage. The MNPD vehicle was assigned to Captain Rita Brockmann-Baker. According to a security camera in the garage the accident occurred at 2:39 a.m.

3. The Appellant went into work following the accident. A few minutes later she returned to the parking garage and inspected Capt. Baker’s vehicle. She then drove her personal vehicle out of the parking garage, parked it on the street and returned to work. At 3:23 a.m., the Appellant returned to the garage and again inspected Capt. Baker’s vehicle. She then returned to her office, signed out as sick, left the building at 3:30 a.m., and drove home.

4. At approximately 5:30 a.m., the Appellant returned to the parking garage with her husband. The Appellant and her husband went to the security office and reported the accident at 5:34 a.m. She told the investigating officer that the accident had occurred at approximately 4:30 a.m.
5. The Appellant was interviewed about the accident by her supervisors on October 27, 2009. She admitted that she had not been entirely truthful to the investigating officer about the actual time of the accident and that it had actually occurred about 3:30 a.m.

6. In an email to Lt. Dorise Polk on October 28, 2009, the Appellant stated that the accident had occurred between 2:00 and 3:00 a.m. She stated she was wrong to not have reported the accident immediately but that she was scared and she panicked.

7. By a letter dated May 5, 2010, from Deputy Chief Steve Anderson, the Appellant was notified that MNPD was terminating her employment for violating General Order 09-03, Deportation and Personal Appearance, VII. Personal Behavior, E. Honesty & Truthfulness. She was also issued a one (1) day suspension for violating and General Order 09-03, VII. F. Responsibility.

**APPLICABLE LAW**

1. **MNPD General Order 09-03, Deportation and Personal Appearance, VII. Personal Behavior, E. Honesty and Truthfulness:**

   Employees should be honest and truthful. Truthfulness shall apply when an employee makes a materially false statement with the intent to deceive. A statement is material when, irrespective of its admissibility under the rules of evidence, it could have affected the course or outcome of an investigation or an official proceeding.

2. **MNPD General Order 09-03, VII. F. Responsibility:**

   Employees shall at all times conduct themselves in a responsible manner.
3. Metropolitan Government of Nashville and Davidson County Civil Service Rule, Chapter 6 Employee Conduct, Disciplinary Action and Grievance Procedures, Section 6.7- Grounds For Disciplinary Action §11:

Violation of any written rules, policies or procedures of the department in which the employee is employed.

CONCLUSIONS OF LAW

1. MNPD has failed to carry its burden of proof by the preponderance of the evidence that the Appellant violated General Order 09-03, VII. E. Honesty & Truthfulness, which prohibits employees from making “materially false statements with the intent to deceive.” The Appellant admitted she was not as forthcoming immediately after the accident as she should have been, both in terms of the delay in reporting the incident as well as the inaccurate time of the accident she provided to the investigating officer. The Appellant stated that she was scared and she panicked. However, a three hour delay in reporting and an initial two hour discrepancy in the specific time of the incident does not constitute an “intent to deceive” in violation of the General Order. An “intent to deceive” under these circumstances would have been a total failure to report the accident and/or a complete denial of culpability.

2. Additionally, the General Order defines a statement as material “when…it could have affected the course or outcome of an investigation or an official proceeding.” Even if this minor accident in the garage constituted an “investigation or official proceeding,” it is difficult to imagine how the discrepancy in time between when Appellant stated the accident occurred and when the accident actually occurred as
recorded on the security video could have affected the outcome of the proceeding. The only potential matter of contention in the accident would have been who caused it, to which Appellant clearly admitted by reporting the accident herself.

3. Accordingly, it is determined that the Appellant’s conduct did not constitute a violation of General Order 09-03 VII E. Honesty & Truthfulness.

4. The Department has carried its burden of proof by the preponderance of the evidence that the Appellant violated General Order 09-03 VII F. Responsibility, which states that “employees shall at all times conduct themselves in a responsible manner.” By the Appellant’s own admission she did not act in a responsible manner in this situation. This also constitutes a violation of Civil Service Rule, Chapter 6, Section 6.7- Grounds For Disciplinary Action §11, in that she violated a rule of her employing department.

5. To terminate the employment of a 20 year employee with no disciplinary record for a momentary lapse in judgment over a minor traffic accident in a parking garage would be an injustice. Accordingly, it is hereby ORDERED that the Appellant’s termination for violating General Order 09-03 VII E. Honesty & Truthfulness is REVERSED and she should be REINSTATED to her former position with full back pay and benefits, minus a three (3) day suspension for violation of General Order 09-03 VII. F Responsibility.

This Initial Order entered and effective this 24th day of August, 2011. Stovall Administrative Judge
Filed in the Administrative Procedures Division, Office of the Secretary of State, this 24th day of August, 2011.

____________________________________
Thomas G. Stovall, Director
Administrative Procedures Division