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CLARISSA CROSS

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**BEFORE THE CIVIL SERVICE COMMISSION OF THE METROPOLITAN
GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**

IN THE MATTER OF:

CLARISSA CROSS

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No. 43.02-111887J

INITIAL ORDER

This matter was heard on October 20, 2011, before Administrative Law Judge Anthony Adgent.

This matter was initiated by a Step 5 grievance submitted by Clarissa Cross, regarding the termination of Ms. Cross for violation of rules governing the conduct of employees of the Davidson County Sherriff's Department.

The issues to be determined at hearing are whether the Department carried its burden of proof by preponderance of evidence on the following:

FINDINGS OF FACT

1. During the relevant timeframe, Ms. Cross was an employee of DCSO. At the time of events leading up to the termination, Ms. Cross was employed as a Correctional Officer.
2. On March 10, 2011, Ms. Cross left work to go to court in Lakewood, which was about twenty to twenty-five miles from where she was assigned to work.
3. Ms. Cross had dropped her cell phone in water and was having problems with her phone, so she decided to go to Absolute Wireless on Thompson Lane after she left work instead of going straight to court. Ms. Cross spent approximately one hour to one hour and a half in the Absolute Wireless Store before she went to court.
4. Ms. Cross then went to court, and wore her official DCSO jacket and pants to Lakewood Municipal Court.

5. In March of 2011, DCSO received a complaint from a Lakewood Police Officer that Ms. Clarissa Cross appeared in Lakewood Municipal Court for traffic court wearing her DCSO uniform.
6. After receiving this complaint, Chief of Corrections, Tony Wilkes, confronted Ms. Cross and asked her whether or not she wore her uniform to Lakewood Municipal Court.
7. Ms. Cross admitted that on March 10, 2011, she wore her official DCSO jacket and **pants to** Lakewood Municipal Court. Ms. Cross also claimed that the DCSO jacket was not part of the DCSO uniform.
8. The jacket and pants that Ms. Cross wore are recognizable as an official DCSO uniform. On the jacket, there is a badge and patch on the left sleeve delineating the jacket as an official DCSO jacket.
9. Ms. Cross's rank as a Correctional Officer also was clearly visible as an insignia on the collar.
10. The DCSO jacket and pants are part of the DCSO uniform according to policy, and are issued to employees as part of their uniform.
11. When Ms. Cross was first hired at DCSO, she signed and received a copy of the DCSO Employee Job Safety Handbook, which contained DCSO policies and procedures.
12. Ms. Cross also completed and passed training courses on "Ethics and Conduct" and "Employee Uniforms," so she was aware of DCSO policies involving uniforms.
13. On March 16, 2011, DCSO filed disciplinary charges against Ms. Cross. On March 17, 2011, DCSO held a disciplinary hearing. Ms. Cross was present and presented her defense.
14. DCSO reviewed Ms. Cross's prior disciplinary history of other disciplinary infractions. .

15. DCSO used a progressive disciplinary approach, where subsequent violations merit increased punishment. The maximum suspension that an employee can receive at DCSO before they are terminated is a five-day suspension.
16. Ms. Cross had received a five-day suspension in November of 2010, which is the maximum suspension allowed under DCSO's progressive disciplinary approach. Ms. Cross had received a "last-chance letter" for this infraction on November 24, 2010, warning her that "Further disciplinary action would result in the termination of her employment with the Sheriff's office."
17. In addition to the 5-day suspension Ms. Cross received in November 2010, Ms. Cross had previously received a 3-day suspension in October of 2010; a 3-day suspension in November of 2007; and a 1-day suspension in December of 2007.
18. Based upon evidence presented during the March 17, 2011 hearing, DCSO concluded that Ms. Cross had violated DCSO rules and regulations and the Civil Service rules. Specifically, Ms. Cross was found to be in violation of DCSO Policy 1-1.301 Employee Uniforms; 1-1.312 Employee Conduct, Grounds for Disciplinary Action Number 18, and the Metropolitan Civil Service Rules, Section 6.7: Grounds for Disciplinary Actions, Number 11.
19. Accordingly, Ms. Cross received a letter dated March 18, 2011, notifying her of the termination. The same letter explained Ms. Cross's right to appeal the termination.

CONCLUSIONS OF LAW

1. The Davidson County Sheriff's Office is the Petitioner in this matter, the party that initiated the proceedings, and as such, is assigned the "burden of proof." The burden of proof is

the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A “preponderance of the evidence” means the “greater weight of the evidence,” or “the more probable conclusion, based on the evidence presented.” The burden of proof is generally assigned to the party seeking to change the present state of affairs with regard to any issue. *See*, Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS. In the instant case, that means that DCSO must prove, by a preponderance of the evidence, that the Grievant violated Davidson County Sherriff’s Office policy/rules, and that the appropriate disciplinary response is termination.

2. Ms. Cross has admitted that she is guilty of the charges made against her.

3. Ms. Cross violated DCSO Policy 1-1.301 Employee Uniforms.

4. DCSO Policy 1-1.301 Employee Uniforms states, in the section titled Uniformed Employees:

For an employee’s uniform to be acceptable the wearing apparel must be worn in compliance with these guidelines and the guidelines provided in Policy #1-1.302. All uniformed employees will be issued the following uniform items upon completion of their pre-service training:**Green Uniform Pants, Black jacket with embroidered name in Gold.** (Ex. 1, page 1).

5. DCSO Policy 1-1.301 Employee Uniforms, Off-Duty Wear states: “The DCSO uniform, badge and identification are **not for wear or display when an employee is off duty**, except for a reasonable amount of time to travel to and from work.” (Ex. 1, page 5).

6. On March 10, 2011, Ms. Cross appeared in Lakewood Municipal Court for traffic court wearing her DCSO uniform.

7. Ms. Cross claimed that when she left work on March 10, 2011, she knew that she had to go to court in Lakewood, which was about twenty to twenty-five miles from where she was assigned to work.
8. Ms. Cross had dropped her phone in water and was having problems with her phone, so she decided to go to Absolute Wireless on Thompson Lane after she left work instead of going straight to court. Ms. Cross spent approximately one hour to one hour and a half in the Absolute Wireless Store, and then traveled to Lakewood Municipal Court, still wearing her uniform.
9. DCSO Policy 1-1.301 specifically states that the DCSO uniform, badge, and identification are not for wear or display when an employee is off duty, except for a reasonable amount of time to travel to and from work.
10. A reasonable amount of time to travel to and from work would consist of the amount of time it would take Ms. Cross to drive from her job assignment to her residence. Ruby Joyner, Director of the Training Academy at DSCO, testified that a reasonable amount of time allows an employee to have enough time to travel from work to home, *not* “from work to the movies, or work to the bowling alley, or work even to Absolute Wireless.”
11. Ms. Cross’s actions of leaving work in her uniform, spending approximately one hour to one hour and a half at Absolute Wireless, and then traveling to Lakewood Municipal Court while still in uniform clearly exceeded a “reasonable amount of time to travel to and from court” under the policy. (Tr. 59: 1-6).
12. The DCSO jacket and pants are part of the DCSO uniform according to policy, and are issued to employees as part of their uniform.

13. Ms. Cross had previously completed and passed training courses on “Employee Uniforms,” so she was well aware of DCSO policies involving uniforms.

14. Ms. Cross’s actions of wearing her official DCSO jacket and pants to Lakewood Municipal court, while off-duty and exceeding a reasonable amount of time for travel to and from work, violated DCSO Policy 1-1.301 Employee Uniforms.

15. Ms. Cross’s violations of DCSO Policy 1-1.312 Employee Conduct, Grounds for Disciplinary Action, Number 18: Using official position or identification for personal or financial gain.

16. DCSO Policy 1-1.312, Employee Conduct, states that Grounds for Disciplinary Action consist of Number 18: “Using official position or identification for personal or financial gain.”

17. DCSO Policies are designed to be read in their entirety. DCSO Policy 1-1.312, in the section titled “Ethics,” states

Each employee of the DCSO shall avoid any action, whether or not specifically prohibited, that may result in, **or create the appearance of:**

- Using public office for private gain;
- Giving preferential treatment to any person;
- Impeding government efficiency or economy;
- Losing complete independence or impartiality
- Affecting adversely the confidence of the public in the integrity of the agency.

18. On March 10, 2011, Ms. Cross appeared in Lakewood Municipal Court for traffic court wearing her DCSO uniform, consisting of her official DCSO jacket and pants.

19. In March of 2011, DCSO received a complaint from a Lakewood Police Officer that Ms. Clarissa Cross appeared in Lakewood Municipal Court for traffic court wearing her DCSO uniform.

20. The jacket and pants that Ms. Cross wore is immediately recognizable as an official DCSO uniform. On the jacket, there is a badge and patch on the left sleeve delineating the jacket as an official DCSO jacket.
21. Ms. Cross's rank as a Correctional Officer also was clearly visible as an insignia on the collar.
22. Ms. Cross had previously completed and passed training courses on "Ethics and Conduct" and "Employee Uniforms," so she was well aware of DCSO policies involving ethics and uniforms.
23. As a law enforcement entity, DCSO must avoid any appearance of favoritism, preferential treatment, or any other form of impropriety.
24. Ms. Cross's actions of wearing her uniform to Lakewood Municipal Court created the appearance of using her official position or identification for private gain.
25. Ruby Joyner, Director of the Training Academy at DCSO, testified that "From the day they [DCSO employees] start work, the public is watching everything we do....It's very important that we conduct ourselves off-duty in a manner that would shed a positive light on this office as well as to the community, because we work for the community."
26. Tony Wilkes, Chief of Corrections at DCSO, testified that, "The fact that you're wearing a uniform, it gives the appearance, regardless of what we say and what we do, that we're looking for an easy way out, especially when we're wearing these uniforms outside of our official duties." Chief Wilkes also emphasized that "The uniform is the face of the agency."

27. Ms. Cross's actions adversely affected the confidence of the public in the integrity of the Sheriff's Office.

28. Regardless of Ms. Cross's intent, her actions reflected poorly on the Sheriff's Office and created the appearance that she was using her official position and identification for private gain.

29. Thus, Ms. Cross violated DCSO Policy 1-1.312.

30. Ms. Cross's violations of Metropolitan Civil Service Rules, Section 6.7: Grounds for Disciplinary Actions, Number 11.

31. As set forth above, Ms. Cross violated the rules and policies of DCSO.

32. Thus, Ms. Cross violated Metropolitan Civil Service Rules, Section 6.7: Grounds for Disciplinary Actions, Number 11.

33. The punishment imposed on Ms. Cross was reasonable.

34. On March 16, 2011, DCSO filed disciplinary charges against Ms. Cross.

35. On March 17, 2011, DCSO held a disciplinary hearing. Ms. Cross was present and presented her defense.

36. Based upon evidence presented during the March 17, 2011 hearing, DCSO concluded that Ms. Cross had violated DCSO rules and regulations and the Civil Service rules. Specifically, Ms. Cross was found to be in violation of DCSO Policy 1-1.301 Employee Uniforms; 1-1.312 Employee Conduct, Grounds for Disciplinary Action Number 18, and the Metropolitan Civil Service Rules, Section 6.7: Grounds for Disciplinary Actions, Number 11.

37. Accordingly, Ms. Cross received a letter dated March 18, 2011, notifying her of the termination. The same letter explained Ms. Cross's right to appeal the termination.
38. Ms. Cross has an extensive disciplinary history at DCSO.
39. Ms. Cross had received a five-day suspension in November of 2010, which is the maximum suspension allowed under DCSO's progressive disciplinary approach. Ms. Cross had received a "last-chance letter" for this infraction on November 24, 2010, warning her that **"Further disciplinary action would result in the termination of her employment with the Sheriff's office."**
40. In addition to the 5-day suspension Ms. Cross received in November 2010, Ms. Cross had previously received a 3-day suspension in October of 2010; a 3-day suspension in November of 2007; and a 1-day suspension in December of 2007.
41. Ms. Cross's actions of wearing her uniform to Lakewood Municipal Court were serious in nature and violated the DCSO Uniform policy as well as the DCSO Employee Conduct policy.
42. As a law enforcement entity, DCSO must avoid any appearance of favoritism, preferential treatment, or any other form of impropriety.
43. Regardless of Ms. Cross's intent, her actions reflected poorly on the Sheriff's Office and created the appearance that she was using her official position and identification for private gain.
44. Based on the foregoing facts, the serious nature of Ms. Cross's actions, and her prior disciplinary history, this court finds that the termination of Ms. Cross's employment was justified and should be upheld.

It is so **ORDERED** this the _____ day of _____, 2012.

Anthony Adgent
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 27 day
of January, 2012

Thomas Stovall, Director
Administrative Procedures Division