11-22-2011

METRO NASHVILLE DEPT. OF GENERAL SERVICES, Petitioner, /Department vs. KELLY COLTRIN, Respondent/, Grievant.

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This contested administrative case was heard in Nashville, Tennessee, on November 22, 2011, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State and sitting for the Civil Service Commission. Ms. Jennifer Cavanaugh, Assistant Metropolitan Attorney, represented the Department. The Respondent was represented by his legal counsel, Ms. Michelle Owens. At the conclusion of the hearing, the matter was taken under advisement, pending submission of the parties’ Proposed Findings of Fact and Conclusions of Law. On February 6, 2012, the final document was received, and the matter was declared ready for consideration.

This hearing was convened at the request of Kelly Coltrin (“Grievant”), challenging a five (5) day suspension imposed by the Metropolitan Nashville Department of General Services (“the Department”) for violations of (1) Policies and Procedures of the Metropolitan Nashville Department of General Services, and (2) Rules/Regulations of the Metropolitan Civil Service Commission. Upon consideration of all the evidence, arguments of counsel, and the entire record in this matter, it is determined that the Grievant violated the Policies, Procedures and Rules, as charged, and that such violations warrant the imposition of a five (5) day suspension. This determination is based on the following Findings of Fact and Conclusions of Law.
FINDINGS OF FACT

➢  Re: General Findings.

1. During the relevant timeframe, Mr. Coltrin was employed as the Garage Manager at the Heavy Vehicle Shop, a division of the Office of Fleet Management within the Department of General Services.

2. Mr. Coltrin’s annual salary at the time of the disciplinary action was $71,507.60, the highest salary for any employee in the Heavy Shop. As the Garage Manager, he supervised approximately thirty-five (35) employees.

3. The Employee Performance Plan / Functional Job Description for the position of Garage Manager at the Heavy Vehicle Shop states:

   [The Garage Manager] Manages Heavy Vehicle shop supervisory staff to ensure the effective use of resources and timely completion of preventative maintenance, inspection, diagnosis, and repair of equipment including trucks, buses, tractors and trailers, paving equipment, dump trucks, fire trucks, ambulances, heavy construction equipment and assorted vehicles and equipment.

4. Mr. Coltrin’s Employee Performance Plan also provided that his job duties as Garage Manager included, but were not limited to the following:

   - Manages Metro Heavy Vehicle Repair Shop
   - Set Standards for the quality of work performed to minimize repeat discrepancies, ensuring maximum vehicles/equipment availability.
   - Performs various administrative duties including employee evaluation and maintaining appropriate records.
   - Manages the environment and reclamation program for assigned work areas.
   - Enforces compliance with safety procedures and standards.

5. Since Heavy Shop employees repair first responder vehicles such as fire trucks and ambulances, their work often affects the public. Employees, especially supervisors, often have to make crucial decisions and do everything in their power to ensure a quick turn-around time for vehicle repairs.
Re: Violation of safety rules, regulations or procedures.

6. The General Services Safety Manual was developed by Safety Coordinator Jerry Hall, adopted by the General Services Department [effective 10/15/07] and distributed to General Services employees. On August 10, 2009, Mr. Coltrin acknowledged by his signature that he had received, read, and was familiar with the contents of the General Services Safety Manual, and that he agreed to comply with its terms. He further acknowledged his understanding of the provision that “any infractions on [his] part may lead to disciplinary action up to and including termination.”

7. The General Services Safety Manual states, in a section devoted to Supervisors’ Responsibilities, that Supervisors are “responsible for [their] work area and the safe performance of their employees. [They] shall encourage proper attitudes, instruct employees under their supervision in safe working techniques, and shall enforce safe rules and practices. Supervisors will be subject to disciplinary action for failure to report violations and for allowing unsafe working conditions.”

8. Under a list of specific Supervisors’ Responsibilities, the Manual includes the following:

* * *

4. Supervisors shall check visually any new work assignments before employees are allowed to start work. If a hazard is found, the supervisor shall attempt to remove the hazard. If it cannot be removed, the supervisor shall impress upon the employees the danger of existing hazards and barricade the area.

* * *

6. Supervisor shall be responsible for inspecting work areas on a frequent basis to identify hazards. When hazards are found, they shall warn employees and initiate proper procedures for corrections.

9. Under a list of General Rules, applying to all employees, the Manual includes the following:

* * *

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1 See Hearing Exhibit #2.
5. No equipment or used parts shall be allowed to accumulate on work benches, lockers, floors, windows, etc. Unused equipment or parts shall be returned to central supply at the completion of a job or no later than the end of a shift.

6. All spills (oil, grease, gasoline, water, anti-freeze, coffee, etc.) shall be removed or cleaned as soon as a spill occurs. A wet floor sign shall be placed until the floor is no longer slippery.

* * *

13. Oil and greasy rags shall be stored in a metal container with a lid.

10. The State of Tennessee has its own safety program, referred to as the Tennessee Occupational Safety and Health (“TOSHA”). Tennessee’s guidelines and standards have to be equal to, or more restrictive than, federal OSHA standards. According to Safety Coordinator Jerry Hall, the TOSHA standards are very similar to Federal OSHA standards.

11. TOSHA can cite any employer that falls under the programs for safety concerns. Generally, a government, as an employer, would not be fined under TOSHA, but safety violations could lead to lawsuits anytime there are unsafe conditions and an employee or visitor is injured. Many of the Tennessee and Federal OSHA standards are reflected throughout the General Services Safety Manual.

12. Sometime around April 1, 2011, Stacey Wall, a twenty-five year veteran with the Office of Fleet Management, was asked to help out and fill in for Mr. Coltrin as Heavy Vehicle Garage Manager, while General Services Director Nancy Whittemore checked into a few issues at the Heavy Shop. Mr. Coltrin had been placed on administrative leave on April 1, 2011.

13. Once Mr. Wall arrived at the Heavy Shop, he noticed that morale at the Heavy Shop was low.

14. Mr. Wall also noticed several safety violations and things that needed to be repaired in the Heavy Shop. Judy Lewis, the parts supervisor, told Mr. Wall that the oil
room was leaking oil and that it had been doing so for several years. Ms. Lewis showed Mr. Wall the oil leak, and a bucket that had run over with oil, with drums and other items thrown in as well.

15. Another employee, Jim Maxwell, showed Mr. Wall some oil leaks in the tire room and one outside the service writer’s entry door. Mr. Maxwell was concerned about several items he had requested to be fixed that had not yet been addressed.

16. Mr. Wall also noticed that the Heavy Shop did not have an antifreeze recycler, and the employees were utilizing a makeshift pump. The employees were pumping antifreeze out of a drain pan into the hazardous waste barrels to dispose of it; the pump was powered by a battery charger. This alarmed Mr. Wall due to the risk of sparks and fire. During his testimony, Mr. Wall explained that anything that is hooked to a battery source can cause sparks; any nearby flammable fluids can then ignite.

17. As acting Heavy Vehicle Garage Manager, filling in for Mr. Coltrin, Mr. Wall reported several of these safety concerns to General Services Director Nancy Whittemore. Ms. Whittemore ordered a safety evaluation by Jerry Hall, Department Safety Coordinator.

18. Jerry Hall conducted a safety evaluation of the Heavy Shop on April 7, 2011, and discovered numerous safety violations, which he reported to Ms. Whittemore. Among the safety violations discovered were the following:

a. Numerous areas of the shop floor had spills or leaks of oil or chemicals. While some absorbent material had been put down, it was not enough, and the slipping hazards were still significant. It appears that the absorbent material beneath those drums had not been changed in quite some time, making it useless to prevent chemicals from seeping into the floor. The oily rags in the photographs were also supposed to be kept in a proper container. The failure to store the oily rags in a proper container could potentially lead to a fire hazard. (Ex. 4: Photograph 1, Photograph 2; Tr. 20: 18-25).

b. The thermostats did not have proper covers on them, which could lead to an electrical problem. (Ex. 4: Photograph 3; Tr. 21: 19-24).
c. There were exposed wires on the diesel fuel pump switch, and this can also cause electrical problems. The presence of exposed wires on a diesel fuel pump switch is considered to be an Occupational Safety and Health Administration (“OSHA”) citable offense. (Ex. 4: Photograph 4; Tr. 22: 1-7).

d. Wires were also exposed without proper covers in other locations throughout the Heavy Shop. Photograph five shows a large number of exposed wires without proper covers. (Ex. 4; Tr. 22: 9-10). Photograph six shows a timer with exposed wires, where the cover was not attached fully to the timer and was not in a closed position. (Ex. 4; Tr. 22: 17-25). Photograph sixteen also shows more exposed wires that lacked a cover, which could cause a shock or electrical hazard. (Ex. 4; Tr. 1-5). Safety Coordinator Jerry Hall testified that these exposed wires are “most definitely” something that OSHA would look for when conducting a safety evaluation. (Ex. 4: Photograph 5; Tr. 22: 7-16).

e. The emergency eye wash stations were extremely dirty. (Ex. 4: Photograph 7, 8, 9; Tr. 23: 3-7; Tr. 24:2-1; Tr. 24: 13-18). One eye wash station had several items stored in front of it blocking access to the eye wash station. (Tr. 24: 2-10). Another eye wash station had chemical spills in front of it and was blocked by several items. (Ex. 4: Photograph 8, 9; Tr. 24: 13-15). Absorbent material had been put down on the chemical spills, which caused a potential slip hazard. (Tr. 24: 13-18). Safety Coordinator Jerry Hall testified that general housekeeping issues such as cleaning and clutter are considered to be citable offenses by OSHA.

f. Heavy objects were leaned against the walls in an unsecure fashion, leaving Heavy Shop employees at risk for injury. (Ex. 4; Photograph 11). There was also a chemical bottle without a top on it and hoses that could pose a tripping hazard. (Ex. 4: Photograph 11; Tr. 25:2-5).

g. Chemical containers were not stored properly. (Ex. 4: Photograph 12, Photograph 22; Tr. 25: 13-18). There was oil or some other substance on the floor near the chemical containers and one container was tipped over. (Tr. 25: 13-18). The blue container, which appeared to be storing a freon or some type of propane, was not stored in a proper fashion. (Tr. 25: 16-19). In Photograph twenty-two, there is also a freon or a propane tank there with all the other potentially flammable materials. (Tr. 30: 15-18).

h. The shop was extremely cluttered. One exit was nearly blocked by an abundance of tires stacked in the area of the exit. (Ex. 4: Photograph 13; Tr. 54: 12-15).
i. The hand wash areas were filthy and appeared to have been unclean for some time. (Ex. 4: Photograph 14, 15; Tr. 26: 11-25). Safety Coordinator Jerry Hall testified that this would be considered a general housekeeping and cleanliness violation by OSHA.

j. Grinders had a gap of greater than the required 1/8 inch between the wheel and the guard. (Ex. 4: Photograph 17; Tr. 28: 1-4). The requirement of 1/8 inch keeps items being sharpened from being pulled in to the grinder, and thus prevents employees from getting their hands pulled into harm’s way. (Tr. 28: 7-11). If the gap is greater than 1/8 inch, then it’s easier to pull an item into the gap. (Tr. 28: 10-11).

k. A flammable material storage cabinet which was supposed to be vented to the outside had pipes that were not connected. (Ex. 4: Photograph 18; Tr. 28: 17-20). This presents a safety hazard because if an employee has a spill inside the cabinet and there was a flammable material present, then the material could potentially become combustible at any time. (Tr. 28: 23-25). Anything that could set off a spark could potentially ignite the contents inside the cabinet. (Tr. 29: 1-2).

l. An active battery boost pack was stored on top of a chemical drum, leaving the shop at risk for a fire caused by any spark from the battery boost pack. (Ex. 4: Photograph 19; Tr. 29: 5-10).

m. Several chemical drums had chemical residue standing on top of the container. (Ex. 4: Photograph 10, 11; Tr. 29: 22-25; Tr. 30: 11-12). Safety Coordinator Jerry Hall testified that this is considered to be a safety hazard because an employee could get the chemical in their eyes or on their skin. (Tr. 30: 4-8).

n. Oily rags were not stored in proper containers. (Ex. 4: Photograph 23; Tr. 30: 21-24). Oily rags are supposed to be stored in a special container until the end of the shift and then they are supposed to be removed. (Tr. 30: 21-24). This poses a possible fire hazard, slip and fall hazard, and is an OSHA citable offense. (Tr. 31:1-5).

o. An absorbent material was placed around large chemical containers. The safety hazard arose when the absorbent material became saturated, and it was saturated to the point that it had actually leaked out of the floor area. (Tr. 31: 7-12). Again, this could be a slip and fall hazard as well as a fire hazard. (Ex. 4: Photograph 24, 25; Tr. 31: 7-12). Safety Coordinator Jerry Hall testified that the leak over the large area of the floor, present in Photographs twenty-four and twenty-five, had probably been present for at least a week. (Tr. 58: 21-22).
19. Many of the safety violations, including the general clutter, poor housekeeping conditions, and unsanitary conditions that Jerry Hall found during his inspection, appeared to have been present for an extended period of time.

20. After Jerry Hall conducted the safety inspection, he compiled a report and submitted it to General Services Director Nancy Whittemore. Any director, assistant director, supervisor, or employee at the Department of General Services could have asked for a safety inspection at any time. Mr. Coltrin never requested a safety inspection at the Heavy Garage.

21. Maintaining a facility in compliance with all of the relevant safety rules is not an impossible task. An earlier TOSHA inspection of the General Services Light Shop resulting in a glowing report. Stacey Wall was the Garage Manager at the General Services Light Shop at that time. The TOSHA inspector took pictures throughout the shop as examples of “how it should be done.”

22. Mr. Wall, who is currently serving as the Garage Manager at the Heavy Shop, testified that the safety violations set forth above have all been fixed and no longer exist.

➢ **Re: Deficient or inefficient performance of duties.**

23. In March of 2011, General Services Director Nancy Whittemore received complaints from Heavy Shop employees who claimed that they worked in a hostile work environment. As a result, between March 28, 2011 and April 6, 2011, interviews were conducted with all available Heavy Shop employees. The employees were asked their thoughts about their work environment and morale in the Heavy Shop.

24. A great majority of the employees stated in their interviews that morale in the shop was low and that the work environment was hostile. This was particularly true of the employees whom Mr. Coltrin directly supervised. While there were other individuals brought up by some of the employees interviewed, Mr. Coltrin was the only supervisor mentioned by most of the employees throughout the interviews.
25. Todd Best and Jennifer Campbell, who conducted the interviews at the Heavy Shop, reported their findings to Ms. Whittemore. After Ms. Whittemore learned of the complaints involving Mr. Coltrin, she placed him on administrative leave on April 1, 2011. Ms. Whittemore was concerned that many employees had mentioned Mr. Coltrin’s name when asked about the morale and environment at the Heavy Shop; she felt it was in everyone’s best interests to place Mr. Coltrin on administrative leave while she pursued an investigation into the complaints.

26. Several Heavy Shop employees who were directly supervised by Mr. Coltrin testified at the contested Civil Service Appeal hearing on November 22, 2011. These employees included: Steve Horton, Jesse May, Thomas Saud, and Michael Scott.

27. Michael Scott, a Master Mechanic who worked under the supervision of Mr. Coltrin and also works as a preacher and volunteer firefighter, testified that at one time Mr. Coltrin required the employees of the Heavy Shop to obtain a “hall pass” in order to use the restroom.

28. Steve Horton, an equipment mechanic at the Heavy Shop who worked under the supervision of Mr. Coltrin, testified that he did not want to come to work when he was supervised by Mr. Coltrin because of the turmoil, the problems going on at the Heavy Shop, the way situations were handled, and the overall negative work environment.

29. Jesse May, a master technician who worked under the supervision of Mr. Coltrin, testified that the work environment was hostile, tense, and that no one wanted to come to work under the supervision of Mr. Coltrin. Mr. May testified that Mr. Coltrin talked down to him and that he hated coming to work under the supervision of Mr. Coltrin. Mr. May also testified that he used vacation and sick days often because he hated coming to work and that he was aware that other employees did the same thing.

30. Mr. May, who also works as a volunteer firefighter in Sumner County, recounted a situation when an employee at the Heavy Shop was injured on duty while inflating a tire. Mr. May explained that the tire blew up and threw the employee backwards, and that Mr. May heard and could feel the impact of the blast. When Mr. May heard the employee
moaning in pain, he ran up to see if he could administer aid to the employee, since he is trained in first-aid as a volunteer firefighter. Mr. Coltrin, who knew Mr. May was a volunteer firefighter and was trained in first-aid, would not let Mr. May touch the person. Instead, Mr. Coltrin was more concerned with taking pictures and preserving the scene.

31. Mr. Horton testified that he once repaired a vehicle inside the Heavy Shop but conducted an assessment of the vehicle outside. Mr. Coltrin later called Mr. Horton into his office to discuss the fact that he worked on a vehicle outside the shop. Mr. Horton explained to Mr. Coltrin that he did not actually work on the vehicle outside and that he was merely assessing the vehicle. Mr. Coltrin then told Mr. Horton that “He [Mr. Horton] was poking him [Mr. Coltrin] in the eye” by disobeying this policy.

32. Mr. Horton, Mr. May, Mr. Saud, and Mr. Scott all testified that the employees who worked under Mr. Coltrin were not productive and that morale was bad. Mr. Scott testified that “There was no morale – we was – we was at each other’s throat literally.”

33. Mr. Horton, Mr. May, Mr. Saud, and Mr. Scott also expressed concern over some of Mr. Coltrin’s rules. Under Mr. Coltrin’s supervision: employees were not allowed to work on equipment outside; and employees were only allowed to assist each other if they obtained permission from a supervisor. Mr. Horton and Mr. May testified that the employees were never given an explanation for these rules.

34. These unexplained rules made working especially difficult due to the nature of the work in the Heavy Shop. For example, if an employee was lifting something that weighed in excess of 200 pounds, that employee would have to obtain permission from a supervisor before asking for assistance from a co-worker. Many employees expressed concern over these rules and believed that these rules made their jobs more difficult, since the nature of their work at the Heavy Shop often required teamwork.

35. The employees who worked under Mr. Coltrin also expressed concerns over the amount of paperwork that they were required to complete. Employees were required to complete general safety inspections of commercial vehicles, despite the fact that all Commercial Driver’s License (“CDL”) holders are required by law to do walk-around
inspections of their vehicles every morning. The current Garage Manager, Mr. Wall, testified that requiring the Heavy Shop employees to duplicate the required CDL walk-around inspections was inefficient, and often took an extra hour and a half before employees could even start repairing the vehicles. This posed serious problems as employees at the Heavy Shop were expected to repair vehicles quickly and efficiently, given the fact that they often repaired first responder vehicles. When Mr. Wall was later named Garage Manager, he worked with the various department coordinators, consolidated their efforts, and eliminated the requirement of a duplicate CDL walk-around inspection.

36. Mr. Horton, Mr. May, Mr. Saud, and Mr. Scott testified that the “front line,” which consists of vehicles that need to be repaired, stayed full under the supervision of Mr. Coltrin. Mr. Horton, Mr. May, and Mr. Scott testified that the “front line” does not currently stay full and moves much quicker now (under a different supervisor) than it did under the supervision of Mr. Coltrin. Mr. May testified that garage efficiency has now improved to the point where the “front line” is frequently empty, and the mechanics sometimes have to search for work.

37. Mr. Horton, Mr. May, and Mr. Scott also testified that morale in the Heavy Shop is much better now, and that employees are more productive now, than when they were under the supervision of Mr. Coltrin.

38. Mr. Coltrin has been investigated for similar allegations in the past. While no disciplinary action was taken based upon those investigations, there were recommendations for changes in his behavior.

➢ **Re: Insubordination.**

39. On January 28, 2010, Assistant Director of General Services, Velvet Hunter, instructed Mr. Bill Malcolm (who directed the activities of the Office of Fleet Management, and was Mr. Coltrin’s supervisor) to submit to her, or General Services Human Resources staff, any reprimands or corrective action he or his employees intended to issue for Office of Fleet Management (“OFM”) employees.
40. This instruction was sent to Mr. Malcolm per the direction of Ms. Nancy Whittemore, Director of General Services and had been the accepted practice within the Department for some time. Ms. Whittemore explained at the hearing on November 22, 2011 that one of the reasons she gave this directive was to ensure that the Department of General Services treated employees equally with respect to verbal and written reprimands.

41. Between March 28, 2011 and April 7, 2011, during investigatory interviews, it was discovered that several employees in the Heavy Vehicle Shop, which Mr. Coltrin supervised, had been issued corrective actions or reprimands.

42. Upon further investigation, it was discovered that reprimands or corrective actions were issued to the following employees since Ms. Whittemore’s directive: Paul Graves, Donnie Fults (2), Michael Karrick, Michael Merrill, Roy Culberson, and Sammy Vester. Mr. Coltrin maintained the records of these reprimands in files in his office.

43. While Mr. Coltrin’s immediate supervisor, Mr. Bill Malcolm, was aware of reprimands to Paul Graves and Roy Culberson, he was unaware of the other corrective action and reprimands. Ms. Whittemore also learned that the Department’s Human Resources staff had not been notified of any of these corrective actions.

44. In Mr. Coltrin’s “Response to allegations,” he stated: “If I have failed to keep Mr. Malcolm, Fleet Manager, informed it was not an act of insubordination rather an oversight.” However, at the November 22, 2011 hearing, Mr. Coltrin stated: “I would say if I failed to keep Mr. Malcolm informed, the burden would be on me, yes.”

**CONCLUSIONS OF LAW**

1. In disciplinary appeals presented to the Civil Service Commission, the Appointing Authority is assigned the burden of proof. In this case, the Appointing Authority is the Metropolitan Department of General Services. [Disciplinary and Grievance Appeal Proceedings (Revised 10/11/11); Civil Services Policies, # 6.8 A-I, Section M: 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.” Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS.

2. The issues presented for consideration in this case are (1) whether the Department has proven, by a preponderance of the evidence, that the Grievant engaged in conduct that violated the Policies, Procedures and/or Rules of the Department and the Metropolitan Government, as charged; and, (2) if so, whether the sanction imposed by the Department was appropriate. With respect to both issues, the Department has met its burden of proof.

3. The Department’s Charges and Specifications allege that the Grievant violated the Metropolitan Civil Service Commission Rules, Chapter 6, Section 6.7 - Subsections 2, 3 & 20. Such conduct, if proven, provides a basis for sanctions pursuant to the Metropolitan Civil Service Commission Rules. The cited Civil Service Rules provide as follows:

6.7 GROUNDS FOR DISCIPLINARY ACTION

The following constitute grounds for disciplinary:

2. Deficient or inefficient performance of duties.

3. Insubordination toward the supervisor.

20. Violation of safety rules, regulations or procedures.

➢ Re: Deficient or inefficient performance of duties.

4. Based upon complaints from Heavy Shop employees that their workplace was a hostile work environment, all Heavy Shop employees were interviewed to determine the actual condition of the workplace and the state of employee morale. Those interviews, and subsequent testimony at the Civil Service hearing, revealed that the employees felt micro-managed in a way that prevented their best work. They felt scolded by the Grievant when they spoke to each other during the day, even to ask for help on work
projects. The employees did not have confidence that the Grievant would support them or help improve the conditions that caused them concern. The Grievant impose rules without reason, which often impeding the employees’ efficiency in their efforts to complete assigned tasks. Some of those rules discouraged teamwork, caused unnecessary delays in routine activities, and led to a perpetually full line of vehicles waiting to be serviced. The conditions fostered by the Grievant led to a decline in employee morale. The Grievant has been investigated for similar allegations in the past. While no disciplinary action was taken based upon those investigations, there were recommendations for changes in behavior. It is clear from the testimony of his employees that his behavior did not change, and that disciplinary action is now necessary to impress upon him the importance of treating employees with respect, and allowing them to do their jobs without treating them like children. After the Grievant was replaced as Garage manager, the morale and overall efficiency of the Heavy Vehicle Shop has greatly improved. His general failure as a supervisor, and his specific failure to manage the shop staff to “ensure the effective use of resources and timely completion of” the duties of the Heavy Shop, clearly support a conclusion that the Grievant engaged in “deficient or inefficient performance of duties,” warranting disciplinary sanctions pursuant to Metropolitan Civil Service Commission Rule 6.7, Subsection 2.

➢ **Re: Insubordination.**

5. In January, 2010, in an effort to make Departmental discipline more uniform, the Assistant Director of General Services reminded all Department supervisors to submit their intentions to issue reprimands or corrective actions to her or the General Services Human Resources staff prior to implementation. That policy had been in place for some time before the reminder was issued. In late March and early April, 2010, during investigatory interviews at the Heavy Vehicle Shop, it was discovered that the Grievant had issued reprimands and corrective actions without following that directive, and that he maintained records of those actions in his office, without notifying his supervisor, the Assistant Director or the Human Resources staff of their existence, either before or after implementation. The Grievant’s actions failed to follow the directive of the Assistant Director of his Department, and interfered with the ability of his superiors and the Human
Resources office to maintain proper personnel files on Department employees. Likewise, he prevented the Human Resources office from properly overseeing the Departmental disciplinary process, to ensure that corrective actions were administered fairly and consistently throughout the Department. The Grievant’s failure to follow the stated directive constitutes insubordination to his supervisor, as contemplated by Metropolitan Civil Service Commission Rule 6.7, Subsection 3.

➢ **Re: Violation of safety rules, regulations or procedures.**

6. As the Heavy Vehicle Garage Manager, the Grievant was responsible for ensuring that the Heavy Shop complied with applicable safety standards at all times. After he was temporarily transferred from that position, a safety evaluation conducted by the Department safety Coordinator revealed numerous safety violations. The most egregious of those were documented and photographed. [See Finding of Fact #18, above, and Hearing Exhibit #4, for descriptions and photographs.] The existence of these safety hazards, many of which had been evident for an extended time, exposed Heavy Shop employees to dangerous conditions, and exposed the Metropolitan government to potential civil liability for injuries incurred by employees and the public. As Garage Manager of the Heavy Vehicle Shop, the General Services Safety Manual and the Grievant’s Job Description imposed upon him the duty of “enforcing compliance with safety procedures and standards,” and to ferret out and protect employees from any hazardous conditions in the workplace. Failure to maintain a safe workplace is grounds for disciplinary action. As set out in the General Services Safety Manual, “Supervisors will be subject to disciplinary action for failure to report violations and for allowing unsafe working conditions.” (See Finding of Fact #7, above.) During his tenure as Garage Manager at the Heavy Shop, the Grievant never requested a safety inspection; nor did he adequately repair safety violations; nor did he properly warn his employees of the hazardous conditions that existed in their workplace. This is perhaps the most egregious of the Grievant’s actions: He failed to maintain a safe workplace, and violated numerous safety rules, regulations and procedures that were established for the welfare of the Heavy Shop employees and the public, in violation of Metropolitan Civil Service Commission Rule 6.7, Subsection 20.
Re: Disciplinary Action.

7. Pursuant to Section 6.5 of the Metropolitan Civil Service Commission Rules, an employee may be disciplined by means of: (1) suspension, (2) demotion, or (3) dismissal. In this case, the Metropolitan Nashville Department of General Services imposed a five (5) day suspension as a sanction for the enumerated infractions. It is concluded that the Grievant’s actions constituted serious violations of provisions of the General Services Safety Manual, and the Metropolitan Civil Service Commission Rules. Mr. Coltrin exposed the Department of General Services to potential civil liability, put employees at risk, and failed to foster an environment where employees felt safe, respected and valued. Both the seriousness of the violations, and the fact that the Grievant had failed to modify his conduct after earlier problems were called to his attention, weigh heavily in favor of an enhanced disciplinary sanction. However, the Department chose to impose only a five (5) day suspension. While the Civil Service Commission is not constrained by the lenient action taken by the Department, it is concluded that, in this case, the Department’s judgment as to the nature of the appropriate sanction will be given substantial weight, and the suspension imposed by the Department will not be enhanced.

Accordingly, based upon these findings, conclusions and analysis, and upon full consideration of the testimony and other evidence submitted by the parties, arguments of counsel, and the entire record, it is hereby found and determined that the Metropolitan Department of General Services has met its burden of proof, and has established by a preponderance of the evidence that the Grievant, Kelly Coltrin, (1) violated specified Policies and Procedures of the Metropolitan Department of General Services, and Rules/Regulations of the Metropolitan Civil Service Commission, as charged; and, (2) that the decision to suspend him for five (5) days, imposed as disciplinary sanctions, is appropriate, and warranted by his conduct.
The Department’s imposition of a five (5) day suspension is therefore upheld, and the Grievant’s appeal is hereby DISMISSED.

It is so Ordered.

Entered and effective this 17 day of February, 2012 Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 17 day of February, 2012

Thomas G. Stovall, Director
Administrative Procedures Division