



6-14-2007

DEPARTMENT OF FINANCE AND  
ADMINISTRATION DIVISION OF MENTAL  
RETARDATION SERVICES, Petitioner, Case No.  
26.15-038119J Judge Marion Wall VS. LEO  
ADAMS, Grievant

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**BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION  
AT NASHVILLE, TENNESSEE**

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<b>DEPARTMENT OF FINANCE AND</b>	)	
<b>ADMINISTRATION (DIVISION OF MENTAL</b>	)	
<b>RETARDATION SERVICES)</b>	)	
	)	
<b>Petitioner</b>	)	<b>Case No. 26.15-038119J</b>
	)	<b>Judge Marion Wall</b>
<b>VS.</b>	)	
	)	
<b>LEO ADAMS</b>	)	
	)	
<b>Grievant</b>	)	

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**INITIAL ORDER**

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This matter came to be heard on June 14, 2007, before Marion P. Wall, Administrative Law Judge, Administrative Procedures Division, Office of the Secretary of State, and sitting for the Tennessee Civil Service Commission. The State was represented by Ms. Marilyn Tucker. The Grievant, Mr. Leo Adams, was not present. At the beginning of this proceeding, the State made a motion that the Grievant be held in default for failure to participate in the hearing. It appearing that the Grievant was aware of time and date of the hearing, and, as evidenced by his correspondence, decided not to attend, the State's motion was GRANTED, and the Grievant was held in default.

**NOTICE OF DEFAULT**

NOTICE IS HEREBY GIVEN THE CLAIMANT THAT HE HAS BEEN HELD IN DEFAULT FOR FAILURE TO APPEAR AT A HEARING ON THE MERITS AFTER RECEIVING ADEQUATE NOTICE. T.C.A. §4-5-309. CLAIMANT HAS 15 DAYS FROM THE EFFECTIVE DATE OF THIS ORDER TO REQUEST THAT THIS FINDING OF DEFAULT BE SET ASIDE. THIS REQUEST MUST BE RECEIVED IN

THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, 312 8TH AVENUE NORTH, 8TH FLOOR, WILLIAM R. SNODGRASS TOWER, NASHVILLE, TENNESSEE 37243. THE REQUEST TO HAVE THE FINDING OF DEFAULT SET ASIDE SHOULD INCLUDE THE REASONS TO JUSTIFY THE CLAIMANT'S FAILURE TO ATTEND. IF CLAIMANT DOES NOT REQUEST THE DEFAULT BE SET ASIDE OR OTHERWISE APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER WILL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW. ANY QUESTIONS REGARDING THIS NOTICE OF DEFAULT OR THE STEPS NECESSARY TO HAVE IT SET ASIDE SHOULD BE SUBMITTED TO THE ADMINISTRATIVE JUDGE SIGNING THIS ORDER BY LETTER OR BY TELEPHONING (615) 741-7008.

The Grievant having been held in default, the hearing was conducted without his participation, as was his choice. The subject of the hearing was the proposed termination of the Grievant from employment for the good of the service. After consideration of the entire record, it is determined that the termination of the Grievant for the good of the service should be **UPHELD**. This determination is based upon the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

1. Grievant, Leo Adams, was employed by the state as a Residential Program Specialist from August 16, 2000 through November 18, 2002 in the Transition Division of the Department of Finance and Administration, Division of Mental Retardation Services, Middle Tennessee Regional Office (MRTO).

2. Grievant was supervised directly by Becky St. Clair, Director of Transition Division.

3. During a January 7, 2002 meeting, it was agreed that Grievant would collect money from each staff member in order to purchase a refrigerator and microwave for the break room. A dispute arose during the collection when Grievant claimed that staff employee Donna Bridges had not paid her money for the refrigerator. Donna Bridges claimed that she did make payment of the money to Grievant. Grievant asserted she did not.

4. Director St Clair, in counseling Grievant, informed him that she would take care of the matter and to not confront Bridges about the money. If necessary, Ms. St. Clair was ready to pay the \$20.00 herself to have this problem go away.

5. On January 22, 2002, Grievant, uninvited, entered the cubicle of Bridges and confronted her about the money and accused her of lying; this was done in spite of St. Clair's direction that he not confront Bridges. Another Transition Division employee, Elmarie Brice, witnessed this encounter and intervened in order to avoid any problems between Grievant and Bridges

6. Bridges reported this incident to her supervisor, St. Clair.

7. Between January 28, 2002 and June 26, 2002, Grievant sent numerous e-mail messages through the state's computer system to various state officials including, but not limited to, the Director of the Transition Division, the Director of MTRO, and the Director of Administrative Services for the MTRO.

8. Some of the e-mails, including but not limited to e-mails dated January 31, 2002, March 25, 2002 and June 11, 2002, were critiques and criticisms of Grievant's supervisor, Becky

St. Clair.

9. On June 25, 2002, Grievant was issued a written warning by Janet Simons, MTRO Director, for conduct unbecoming an employee in state service.

10. Between June 27, 2002 and August 14, 2002, Grievant drafted and sent approximately sixteen (16) e-mail messages through the state's computer system to various staff officials, including, but not limited to, the Director of the Transition Division, the governor, the Commissioner of Personnel, the Commissioner of Finance and Administration, the Director of MTRO, and the Director of Administrative Services for MTRO.

11. Despite the written warning, Grievant continued to send the type of e-mails he was warned against sending, his office behavior did not improve, and he chose to not seek employee counseling as suggested by Janet Simons, Middle Tennessee Regional Director. Grievant also resisted any attempts at mediation. Instead, he submitted an Employee Grievance Form with numerous attachments concerning the written warning.

12. Grievant was informed by a July 5, 2002 letter that written warnings were not grievable pursuant to *Rules of the Tennessee Department of Personnel, Review of Written Warning*, but that the same rules provided for a review of written warnings. (See Rule 1120-12-.01 and .02).

13. On about July 30, 2002, Grievant's written warning was upheld after review.

14. On August 1, 2002, Grievant sent an e-mail to, among others, Richard Kellogg, Deputy Commissioner of Department of Finance and Administration, asking that his written warning be removed. On August 15, 2002, Grievant was informed that the warning had been reviewed pursuant to the applicable rules and that no evidence was found of unfair or

discriminatory supervisory practices and that all of Grievant's rights related to review of the written warning had been exhausted.

15. From August 15, 2002, through November 18, 2002, Grievant drafted and sent approximately nine (9) e-mail messages through the state's computer system to various state officials, including, but not limited to, the governor, the Commissioner and Deputy Commissioners of Finance and Administration, the Commissioner of Personnel, the Mental Health and Developmental Disabilities Commissioner, the Director of MTRO, and the Director of Administrative Services for MTRO, seeking the removal from Grievant's personnel file of this same written warning. Throughout this time, Grievant ignored all directives from supervisors up through the chain of command to cease his e-mails and accusations. His supervisors and co-workers consequently determined that he had negatively impacted his work performance and work product and that because of his behavior the work unit to which he was assigned was filled with daily disruption and tension. It was determined that Grievant had demonstrated that reasonable interventions did not impact this disruptive behavior and that he exhibited "an inability or unwillingness to accept normal supervisory oversight in the course of (his) duties or (his) workplace conduct - including the inability or willingness to resolve normal workplace disagreements."

16. During this time, other employees of the Transition Division experienced a daily workplace filled with tension because of Grievant's actions.

17. Grievant's critical work output, the federally mandated placement of institutionalized mentally retarded individuals into safe community settings, also suffered during this time of his repeated e-mails.

18. On 8/29/02, Grievant was given a “2”, a marginal score, on his Performance Evaluation for “use of working time”.

19. On or about October 21, 2002, Grievant was issued a letter from Deputy Commissioner Richard Kellogg recommending termination from state employment.

20. On October 22, 2005, Grievant had a due process hearing regarding the recommended termination. Grievant attended this hearing. (See Rules of the Tennessee Department of Personnel, Disciplinary Action, Minimum Due Process, Rule 1120-10-.03.)

21. On November 18, 2002, Grievant received a letter from Commissioner Warren C. Neel dismissing him from state service “for the good of the service”, *Tennessee Code Annotated* §8-30-326. The letter stated in pertinent part, “You seem never to have accepted the fact that the initial \$20.00 dollar disagreement was not the problem. Your refusal to accept a resolution to that conflict created a new and different workplace conduct and performance issue.”

22. At the hearing, Douglas Bennett, former Assistant Administrative Services Director and Personnel Director at Clover Bottom Developmental Center, testified that he was involved with the matter concerning Grievant, and that Grievant was unable to fulfill the functions of his assigned job and that there was nothing else that could have been done at the time that would have allowed Grievant to continue in his position.

23. Grievant filed a lawsuit in federal district court on February 10, 2003 alleging racial and workplace discrimination. On different dates throughout 2003, 2005 and 2006, the hearing of this civil service appeal has been stayed by the administrative law judge pending federal court actions.

24. In May 2006, the Sixth Circuit Court of Appeals affirmed the Tennessee Middle District Court's dismissal of Grievant's lawsuit that had been decided in the lower court upon the state's Motion for Summary Judgment.

25. Judge Robert Fellman, in the pre-hearing phase of this contested case, required that the State describe, with particularity, the factual basis for the "good of the service" rationale for Grievant's termination. He denied cross motions for Summary Judgment. He explained, with considerable patience, the law of Due Process to the Grievant. He gave the Grievant time to obtain an attorney.

26. The undersigned became the judge in this case upon the imminent retirement of Judge Fellman. In order to set the matter for hearing, the parties were instructed to advise me of their availability regarding specific dates. Mr. Adams did not respond. Thereafter, this matter was set for hearing beginning on June 14, 2007. Mr. Adams responded to the Order setting the hearing date with a letter dated June 12, 2007, received June 13, 2007, in which he stated he would not be available on June 14<sup>th</sup> and 15<sup>th</sup>, and referenced his letters of January 25<sup>th</sup> and 27<sup>th</sup>. In these letters, he informed Judge Fellman that he did not agree with Judge Fellman's deadline of March 16, 2007, for the Grievant to obtain an attorney. In his January 27, 2007, letter, he concluded by stating, "In closing, I will not be intimidated or harassed by you or the State concerning this case or a set date for an attorney."

27. After the hearing in this case, but before this Initial Order was entered, the Grievant, who had been furnished a copy of the transcript, wrote to the undersigned stating that the hearing was held without his consent and Due Process (citing rules relating to minimum due process in proceedings before this Step 5 case and progressive discipline).

28. Throughout this contested case, the Grievant has failed to meaningfully participate, refusing to comply with reasonable requirements relating to setting this case for the hearing in which he could have detailed, and presented proof on, all of his allegations regarding failures of due process, progressive discipline, and any response to the allegation that his termination served the good of the service. In short, he deliberately refused the opportunity to be heard.

### **CONCLUSIONS OF LAW**

1. The State has the burden of proof in this matter, by a preponderance.
2. A career employee may be terminated from employment “for the good of the service”, *Rule 1120-10-.06 (24)*, and see *Tennessee Code Annotated §8-30-326*.
3. As required by *T.C.A. §8-30-326 (b)*, the state has proven by a preponderance of the evidence that termination was the appropriate decision in this case and that such was undertaken for “the good of the service”. In this case, a dispute over \$20.00 reached such proportions that the entire office was affected, as was the critically important work that the office did. Despite being told not to proceed with the matter, the Grievant confronted Ms. Bridges (after a direct order not to do so). He became aggressive, verbally threatening, and would not let the matter of the \$20.00 go. This minor matter exploded beyond all reason and beyond all tolerance. Grievant’s refusal to let go of this dispute over a contribution for a refrigerator and microwave (and all the resulting matters) caused such tension in the office that it seriously affected the work of Mr. Adams and, more particularly, the rest of the office, such that “for the

good of the service” there was no alternative but to terminate Mr. Adams. Any lesser action, disciplinary, mediation, or otherwise, would probably not have sufficed. Grievant’s actions could best be described as irrational. His actions in the pre-hearing phase of this contested case proceeding were of a piece with his behavior before. He has continually asserted that his due process rights were violated at a lower level of proceeding, and has refused to participate in this case, apparently contending that this violation entitled him to restoration of his job and relieved him of any requirement to participate as a party in this proceeding, to the point of asserting that a hearing cannot be held without his “permission.” His concern over due process in earlier proceedings has become the new twenty dollar matter. He has so fixated on this assertion that he refused to participate in the one place where he could be heard on these very complaints, demanding, apparently, that he be re-instated to his position without a hearing.

Therefore, the State having met its burden, the termination of Grievant is UPHELD.

This Initial Order entered and effective this 9th day of August, 2007.

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Marion P. Wall  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 9th day of August, 2007.

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Thomas G. Stovall, Director  
Administrative Procedures Division

