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12-5-2007

DEPARTMENT OF CORRECTION, Petitioner,
vs. Misty Pittman, Grievant

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:

**DEPARTMENT OF CORRECTION,
Petitioner**

DOCKET NO: 26.05-091496J

v.

**Misty Pittman,
Grievant**

INITIAL ORDER

This matter was heard on December 5, 2007, in Henning, Tennessee, before Bettye Springfield, Administrative Judge, assigned by the Secretary of State, and sitting for the Tennessee Civil Service Commission. Bryce Coatney, Staff Counsel for the Department of Correction (“Department”) represented the State. The Grievant, Misty Pittman, represented herself.

The subject of this hearing was the Grievant’s appeal of the termination of her employment by the Department, for theft, conspiracy to commit forgery, and gross misconduct. After consideration of the evidence adduced at the hearing, argument, and the record in this matter, it is determined that the Grievant should receive no discipline in this matter and the Department’s decision that the Grievant be terminated is **overruled**.

This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Findings of Fact contained in the Initial Order issued by this judge on July 17, 2007 are incorporated by reference in this Initial Order and set out below in numbers 1-6.

1. Grievant Misty Pittman was employed with the West Tennessee State Penitentiary (WTSP), as a security guard, on October 12, 1998. At the time of the investigation into the incident that is subject of this matter, she was assigned to the institution's mailroom.

2. As part of her mailroom duties, the Grievant processed mail, which included logging in money orders and checks sent to inmates. All incoming mail addressed to WTSP is either delivered to the mailroom at the prison or picked up at the United States Post Office by mailroom personnel.

3. In December 2005, Internal Affairs instituted an investigation into a report by the mother of an inmate that she had sent her son a check that he never received. The check in question was a cashier's check in the amount of One Hundred Sixty Dollars (\$160.00). The check was issued on November 18, 2005, and cashed at the Smoker Friendly Shack in Ripley, Tennessee, on November 21, 2005.

4. An employee of Smoker Friendly Shack positively identified Alan Pittman, husband of the Grievant, as the individual who cashed the check. Based on the internal investigation, the warden concluded that the only means for Alan Pittman to have obtained the inmate's check would have been through the Grievant.

5. On December 19, 2005, the Grievant was terminated from employment with the WTSP for theft of property, conspiracy to commit forgery, and gross misconduct.

6. Because the Grievant failed to appear at the hearing, no proof was offered on her behalf.

7. At the rehearing of this matter on December 5, 2007, the Grievant adamantly denied taking the \$160.00 cashier's check and giving it to Alan Pittman, her now ex-husband.

8. The warden concluded that Alan Pittman obtained the inmate's check from the Grievant, essentially, because she was supposedly the only young white female who worked in the prison mailroom. According to the Grievant, other young white females also worked in the mailroom, especially on Mondays. At the time of the hearing there was a young white female working in the mailroom, who had worked in the mailroom with the Grievant, and who is now in a relationship with Allen Pittman.

9. The Grievant testified that the picture shown to the employee of Smoker Friendly Shack, which was positively identified as Allen Pittman, was taken some years ago when he was 18 years of age. He now weighs 50 to 60 pounds more, has facial hair, and looks nothing like the photograph used by the investigator.

10 The State presented no additional evidence and, instead, relied on its proof presented at the April 17, 2007 hearing.

CONCLUSIONS OF LAW

1. 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 that discipline imposed on state employees must be progressive:

(a) The supervisor is responsible for maintaining the proper 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.

(b) Any written warning or written follow-up to an oral warning which has been issued to an employee shall be automatically expunged from the employee's personnel file...

(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).

2. Tennessee Department of Personnel Policy 1120-10-.05 CAUSES FOR

DISCIPLINARY ACTION provides that causes for disciplinary action fall into two categories.

(1) Causes relating to performance of duties.

(2) Causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job.

3. Department of Personnel Policy 1120-10-.06 EXAMPLES OF DISCIPLINARY

OFFENSES provides that the following causes are examples of those considered for disciplinary action:

(8) Gross misconduct or conduct unbecoming an employee in the State service.

4. Pursuant to Department of Personnel Policy 1120-10-.07, Progressive Disciplinary Action, an employee may be dismissed by the appointing authority from his position for unacceptable conduct or performance of duties.

5. The State failed to establish by a preponderance of the evidence, as it is required to do, that the Grievant engaged in any unacceptable conduct or performance of duties which would warrant termination of her employment. There is no evidence that the cashier's check issued to an inmate at WTSP was taken by the Grievant.

6. The Grievant was terminated under the theory that she conspired with her then husband, Allen Pittman, in the theft of an inmate's check, which he subsequently cashed at Smoker Friendly Shack. The Department targeted the Grievant because she was "the only young white female" assigned to the prison mailroom, therefore, she had to have been the one to give the check to Allen Pittman. However, there was another young white female who occasionally worked in the mailroom and knew Allen Pittman. Furthermore, the argument that it had to have been a "young white female" who stole the check is substantially lacking in proof.

7. The evidence presented does not exclude any employee in the prison mailroom from having taken the \$160.00 cashier's check and, given the dated photograph used for identification, there is a question as to whether the Grievant's ex-husband was indeed the individual who cashed the stolen check.

8. The State's proof, which it acknowledged was "a bit convoluted," does not meet the preponderance of the evidence burden to sustain the Department's action terminating the Grievant.

9. Accordingly, it is ORDERED that the Department's decision to terminate the Grievant be OVERRULED. The Grievant shall be restored all pay and other benefits consistent with this Order. See T.C.A. Section 8-30-328 (e).

Entered and effective this 20th day of December, 2007.

Bettye Springfield
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
20th day of December, 2007.

Thomas G. Stovall, Director
Administrative Procedures Division