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Geri S. Tinnin

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

IN THE MATTER OF:

Geri S. Tinnin

DOCKET NO: 43.02-064552J

INITIAL ORDER

This matter was heard on November 8, 2006, before Bettye Springfield, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Civil Service Commission of the Metropolitan Government of Nashville. Andrew McClanahan, attorney with the Metropolitan Legal Department, represented the Nashville Fire Department. Respondent Geridine Tinnin represented herself, with the non-legal assistance of her friend, Randall Arthur.

This matter became ready for consideration on December 5, 2006, the date on which the government’s brief was filed with the Secretary of State’s office.

The subject of this hearing was the Respondent’s appeal of the termination of her employment from the Nashville Fire Department (Department) for violation of Civil Service Rules Chapter 6.7, Subsection 1, neglect or failure to perform official duty; Subsection 4, absence without notification or approval of leave; and Subsection 18, excessive absenteeism and/or excessive tardiness and/or abuse of sick leave. After consideration of the record, it is determined that the appropriate discipline in this matter is termination.

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

1. Respondent Geridine Tinnin was employed with the Metropolitan Nashville Fire Department in 2000, but sustained an injury, which resulted in her being rehired in 2001. Respondent was terminated from employment as a Firefighter, effective November 2004, due to her alleged violation of the Civil Service Rules, Chapter 6, Section 6.7 of the Metropolitan Government of Nashville and Davidson County:
   - Subsection 1 – neglect or failure to perform official duty.
   - Subsection 4 - absence without notification or approval of leave
   - Subsection 18– excessive absenteeism and/or excessive tardiness and/or abuse of sick leave.

2. The Respondent became ill, apparently sometime around February 1, 2004, after working her shift with the Fire Department. February 1, 2004 was the last day that the Respondent worked a full shift on the job before requesting sick leave.

3. In February 2004, the Respondent was diagnosed with a number of illnesses, including upper respiratory infection and bronchitis, with her condition getting progressively worse.

4. On March 2, 2004, the Respondent’s paid leave was exhausted and she was marked “LT” (losing time) on the Department’s payroll records. The Respondent then requested leave pursuant to the Family Medical Leave Act (FMLA), without pay, on or about March 5, 2004.

5. The Respondent’s twelve weeks FMLA leave expired on or about May 28, 2004.
6. The only leave available to the Respondent after her twelve weeks FMLA leave expired was leave without pay. Under Civil Service Rule 4.7, the employer has the discretion to grant leave without pay not to exceed twenty work days within a calendar year. The Director of Human Resources may approve leave without pay in excess of twenty work days, but not to exceed six calendar months.

7. The Respondent had short term disability (STD) insurance with Standard Insurance, which approved her claim through June 6, 2004. The maximum STD benefit is 180 days, which would have extended through August 11, 2004; however, she did not provide Standard the requested additional medical information to receive the extended STD benefits.

8. Since February 2004, the Respondent, forty-one (41) years of age at the time, has suffered a severely high white blood count; a mass on her adenoids, that was removed; strep infections; paralysis of the stomach, where she could not retain food; vision problems; atrophy of the brain; high levels of iron; and she was in a coma for over a week, and her bodily functions shut down. It appears that the source of all these illnesses remains unexplained. However, the Respondent was in good health prior to her employment with the Fire Department. She previously was employed as a fashion model in New York and Florida.

9. In a letter dated July 8, 2004, Assistant Chief Jerry Smith informed the Respondent the Fire Department Office of Occupational Health and Safety was unable to determine whether her illness was work related and scheduled an appointment for her to see Dr. Fletcher, the Civil Service Medical Examiner. In August 2004, Dr. Fletcher concluded that he was unable to qualify the Respondent’s medical condition as work related. He later reviewed additional medical records submitted by the Respondent and concluded in November 2004 that the new information did not alter his original opinion.
10. Respondent submitted a claim for “In Line of Duty Injury Leave” or “IOD” leave. The claim was denied because there was not adequate evidence to support a conclusion that her illness was work related. The Respondent did not appeal this decision.

11. The Department placed the Respondent on leave without pay in August 2004 after she no longer qualified for any other leave. The Department did not receive any further explanation from the Respondent regarding her continued absence until after sending the October 14, 2004 letter notifying her of charges placed against her for disciplinary action.

12. As of the date of this hearing, the Respondent was still unable to return to work with the Fire Department. She indicated that she is still receiving medical treatment for dementia, colitis, and some form of bleeding. During the course of the hearing, the Respondent was obviously confused and appeared to have difficulty understanding simple instructions and questions.

CONCLUSIONS OF LAW

1. Respondent was charged with violation of the following rules and regulations of the Civil Service Commission of the Metropolitan Government of Nashville and Davidson County, Chapter 6, Section 6.7:

   Subsection 1 – neglect or failure to perform official duty.

   Subsection 4 - absence without notification or approval of leave.

   Subsection 18– excessive absenteeism and/or excessive tardiness and/or abuse of sick leave.

2. The facts relative to the above charges against the Respondent involve her failure to return to work after she exhausted all approved leave, including sick leave, leave without pay, and leave pursuant to the Family Medical Leave Act (FMLA). The Fire Department does not
dispute the fact that the Respondent was ill at the time she initiated sick leave, or that she continues to suffer a number of illnesses. However, February 1, 2004 was the last day that the Respondent worked a full shift on the job and she is still unable to resume a normal work schedule.

3. The Civil Service Commission of the Metropolitan Government of Nashville and Davidson County has implemented rules that govern employee conduct and disciplinary actions that can be taken against employees of the Metropolitan Fire Department for violation of such rules. Pursuant to Chapter 6, Section 6.7, neglect or failure to perform official duty, excessive absenteeism, and absence without notification or approval of leave are grounds for disciplinary actions.

4. Regarding Subsection 18 above, the evidence clearly shows the Respondent has been ill since February 2004, and the Department does not dispute her illness. Therefore, the proof cannot support a finding of abuse of sick leave. Likewise, there is no evidence of excessive tardiness. However, it is undisputed that the Respondent has been unable to perform the duties of her job for almost two years and remains unable to return to her duties as a firefighter.

5. The evidence shows the Respondent exhausted all her leave for time from work, approximately, in August 2004. Under the circumstances of this case, it may appear harsh to find the Respondent guilty of excessive absenteeism, but there is nothing in the Civil Service Commission Rules that states absences may be excused if there is a valid reason for the employee missing work. It is concluded that Department met its burden of proof that Respondent violated Department policy on excessive absenteeism.

6. It reasonably follows that, where the Respondent has been unable to return to work, she has failed to perform her official duty. The rules do not require that such failure be
deliberate or unjustified. Thus the Department has also met its burden regarding the Respondent’s failure to perform official duty.

7. Finally, the Respondent was charged with violation of the Department’s policy on absence without notification or approval of leave. There is no evidence that the Respondent received approval for her continued absence after August 2004, or gave further notice until she was charged with violation of Department policy in a letter dated October 14, 2004.

8. The Tennessee Court of Appeals has held that “the public payroll cannot be made a haven for those who with or without fault have become unable to perform the duties for which they were employed . . . [and] proper cases justify or require the discharge of public employees when their efficiency or usefulness in their positions has been seriously impaired by their own fault, by the fault of others, or by blameless misfortune.” Reece v. Tennessee Civil Service Commission, 699 S.W.2d 808,813 (Tenn.App. 1985) [Emphasis added.]

9. The circumstances of this case are most unfortunate. However, there does not appear to be any relief available to the Respondent in this action. The Respondent may consider pursuing a disability pension or medical benefits for In Line of Duty injuries, although it is noted that a previous review found her illness did not qualify as IOD. These benefits are authorized under Article 13 of the Metropolitan Charter, for which oversight falls under the jurisdiction of the Metropolitan Employee Benefit Board.

10. Based on the foregoing, unfortunately, it is determined that the appropriate level of discipline for Respondent is termination.
10. Accordingly, it is, ORDERED that Respondent Geridine Tinnin’s employment be TERMINATED.

Entered and effective this 16th day of January, 2007.

_________________________________
Bettye Springfield
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 16th day of January, 2007.

_________________________________
Charles C. Sullivan II, Director
Administrative Procedures Division