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Linda Love

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BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

IN THE MATTER OF:

Linda Love

DOCKET NO: 26.05-097039J

INITIAL ORDER

This contested administrative case was heard on January 25, 2008, at the Brushy Mountain Correctional Complex (BMCX), before Rob Wilson, Administrative Judge, assigned by the Secretary of State, and sitting for the Civil Service Commission for the State of Tennessee. Mr. Bill Hutcherson, staff attorney for the Department of Correction, represented the Department/Petitioner. The Grievant/Respondent, Linda Love, was represented by C. Brad Neff, Esq. Upon conclusion of the hearing, the matter was taken under advisement pending submission of the parties’ Proposed Findings of Fact and Conclusions of Law. Those documents were filed by April 17, 2008, and the matter was declared ready for consideration.

This contested administrative proceeding was a fifth-step disciplinary hearing convened at the Grievant’s request, to consider the termination of her state employment by the Commissioner of the Department of Correction (“the Department”) for engaging in certain prohibited conduct, including (1) Violation of TDOC Policy & Procedures #305.03, Employee/Offender Relationships; (2) Violation of TDOC Policy & Procedures #302.08, Code of Conduct/Oath of Correctional Employee in State Service; and (3) Violation of Policy #107.02, Internal affairs Operational Procedures.” Upon consideration of the evidence and arguments, and the entire record, it is concluded that the Grievant engaged in the prohibited conduct, as charged, and that the proper disciplinary sanction for those offenses is termination from state
employment. This determination is based on the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. The Grievant was employed by the State of Tennessee as a food steward assigned to BMCX for approximately four years.

2. BMCX, located in Petros, Tennessee, is a maximum security facility and houses all classifications of inmates from minimum to maximum custody.

3. The warden at BMCX is James Worthington, an experienced Department administrator with over twenty seven years of correctional experience.

4. In 2007, Warden Worthington requested that the TDOC conduct an internal affairs investigation to consider allegations of potential violations of TDOC policy by certain BMCX staff members including the Grievant, food steward Linda Love.

5. Special Agent Michael Allison was assigned to the investigation. Agent Allison received authorization in March of 2007 to conduct an investigation at BMCX into alleged criminal activity of drug trafficking by BMCX food steward, Marsha Burgess. Included with the other persons who were considered as subjects of the on-going investigation was Linda Love, Ms. Burgess’s mother.

6. Investigation records indicated that Ms. Burgess was engaged in drug trafficking with inmate Daniel Andrew Caridi and possibly with other inmates at BMCX. On April 11, 2007, while the investigation was in progress, Agent Allison received a telephone call from Catherine Caridi, the wife of inmate Daniel Caridi, requesting a meeting.

7. Catherine Caridi had met Marsha Burgess and Linda Love through her then husband to be, Daniel Caridi.


9. Catherine Caridi met with Agent Allison on April 12, 2007, and provided him with information as to her personal relationship with Marsha Burgess and Linda Love. Ms. Caridi was able to provide Linda Love’s address and a description of her residence. Ms. Caridi
considered Ms. Burgess and Linda Love as friends, and stated that they often met at Linda Love’s home for coffee and to discuss her pending marriage to inmate Daniel Caridi.

10. Ms. Caridi admitted that she occasionally smuggled illegal drugs into BMCX as a visitor, and also stated that she provided drugs to Ms. Burgess to smuggle into BMCX for Mr. Caridi. Mr. Caridi worked as an inmate worker in the kitchen where Ms. Burgess and Linda Love worked.

11. During her meeting with Agent Allison, Ms. Caridi agreed to cooperate in a TDOC investigation by consenting to participate in a reverse sting. Ms. Caridi was fitted with a wire and then provided Ms. Burgess with illegal controlled substances. Ms. Burgess obtained the drugs from Ms. Caridi’s home and was arrested upon leaving the residence.

12. During the investigation, Agent Allison interviewed BMCX inmate Daniel Caridi. Mr. Caridi told Agent Allison that Linda Love had opened a post office box in Harriman, Tennessee, in the name of “Thelma Jones” for the sole purpose of receiving money orders from inmate family members for the introduction of tobacco, contraband, and drugs. Evidence introduced by the State included an application for the post office box with the signature “Linda Love” and the name of “Thelma and Amber Jones” as additional persons authorized to accept mail at this post office box. Agent Allison testified that the establishment of such a post office box for the purpose of receiving money orders related to illegal drug activity is a very common practice in connection with the prison setting.

13. Ms. Love admitted that she opened the post office box but stated that it was for her sister. She did not say why her sister needed a post office box. She also stated that she did not know Thelma or Amber Jones. Upon further questioning she stated that her daughter, Ms. Burgess, added the names Thelma and Amber Jones to the post office box application.

14. Based upon the information he received from Ms. Caridi concerning her relationship with Linda Love, and upon the result of the sting operation involving Ms. Love’s daughter, and upon the confirmed information from Daniel Caridi pertaining to the post office box opened by Ms. Love in Harriman, Agent Allison, on April 24, 2007, attempted to contact Ms. Love by telephone to arrange to question her as part of his investigation.

15. TDOC Policy #107.02, “Internal Affairs Operational Procedures,” provides written notice to all TDOC employees of their duty and responsibility to fully cooperate with any authorized investigation being conducted by the internal affairs office. Subsection 1 provides the following:
Upon request, all employees shall fully cooperate with IA agents conducting an authorized investigation, including but not limited to participating in interviews. Failure to do so will constitute insubordination and shall result in disciplinary action, up to and including termination.

16. On April 24, 2007, Agent Allison telephoned Ms. Love’s residence to schedule an interview and spoke with her husband, John Love. Upon identifying himself as an agent with internal affairs, and being informed that Ms. Love was not home, Agent Allison requested that Ms. Love call him when she returned home.

17. Approximately one hour later, Agent Allison received a telephone call from Ms. Love. Agent Allison identified himself and informed Ms. Love that he was conducting a criminal investigation concerning the introduction of illegal drugs into the BMCX facility. Ms. Love told Agent Allison that she would talk to him and agreed to meet him at her house in about two hours.

18. When Agent Allison arrived at Ms. Love’s residence he was told by Ms. Love’s husband, John Love, that she was not going to speak to anyone. Mr. Love did, however, allow Agent Allison to speak by telephone to Ms. Love’s attorney. Ms. Love had not previously mentioned that she was represented by counsel.

19. Based on the statements of Mr. Love, as well as the statements of the person claiming to be Ms. Love’s attorney, Agent Allison concluded that Ms. Love was refusing to consent to the internal affairs interview to which she had previously consented.

20. Ms. Love stated that she could not speak with Agent Allison due to the fact that she had taken a sedative medication after she had agreed to the interview.

21. TDOC Policy #305.03 provides that all TDOC employees, regardless of station, are required to maintain a strictly professional relationship with inmates, inmate family members, and clearly identifiable close associates of an inmate. Social relationships with an inmate, inmate family member, or clearly identifiable close associate are strictly prohibited.

22. In addition to Policy #305.03, Policy #302.08, “Code of Conduct and Oath of Correction Department Employees,” requires that all employees sign and agree to an “Employee Code of Conduct,” which, in pertinent part, contains the following: “Fraternization with inmates, ex-inmates, or inmates’ relatives or friends is prohibited. Employees shall not make more than incidental contact or become unduly familiar with inmates, former inmates, or their friends...”
23. Based upon the information provided to him from the investigation and his review of departmental policies, Warden Worthington issued a notice of intent to Ms. Love on May 10, 2007. The May 10, 2007 written notice provided Ms. Love with information regarding the disciplinary charges being brought against her, including each of the policies she was accused of violating.

24. Following a due process hearing on May 24, 2007, Warden Worthington notified Ms. Love by letter dated May 30, 2007 of his decision to terminate her employment with the State for conduct unbecoming an employee in the State service, based on the evidence; that Ms. Love had violated policies #305.03, #302.08, and #107.02.


26. Ms. Love appealed the termination.

CONCLUSIONS OF LAW & ANALYSIS

1. The Tennessee Department of Correction 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. Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS. In the instant case, that means that the Department of Correction must prove, by a preponderance of the evidence, that Ms. Love engaged in conduct prohibited for State employees, as described in Rule 1120-10-.06, TENN. COMP. R. & REGS., and that separation from state employment is the appropriate disciplinary response to her conduct.

2. The Rules of the Tennessee Department of Personnel, Disciplinary Action, Chapter 1120-10, TENN. COMP. R. & REGS, describe certain prohibited conduct for State employees that may result in disciplinary action being taken against them. As a State employee, the Grievant knew, or should have known, of the application of those Rules to her conduct. Those Rules contain the following provision:
1120-10-.06 EXAMPLES OF DISCIPLINARY OFFENSES. The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.

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

3. *Gross Misconduct,*¹ is defined in Rule 1120-1-.01(42), TENN. COMP. R. & REGS. as “Any job related conduct which may subject an employee to criminal prosecution.” [emphasis supplied]. The Department argued that the Grievant’s conduct, establishing a post office box under false pretenses, could have subjected her to prosecution for furnishing false or misleading information on an official government document.

4. It is clearly evident from the proof presented in this matter that Ms. Love was aware of and subject to the rules and policies of the TDOC and the State of Tennessee Department of Personnel. Additionally, it is clear that she violated these policies through her close association with Ms. Caridi. Furthermore, the evidence also establishes that Ms. Love deliberately chose not to cooperate with an Internal Affairs investigation, in direct violation of TDOC policy.

5. A State employee may be disciplined for (1) causes relating to performance of duty, or (2) causes relating to conduct which may affect an employee’s ability to successfully fulfill the requirements of the job. Rule 1120-10-.05, TENN. COMP. R. & REGS. “A career employee may be warned, suspended, demoted or dismissed by his appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority. . .” Rule 1120-10-.02, TENN. COMP. R. & REGS. Although the law prescribes implementation of progressive discipline for State employees, it also provides that disciplinary action must be administered at the step which is most appropriate for the misconduct. (See, *Tennessee Code Annotated* § 8-30-330; and Rule 1120-10-.07, TENN. COMP. R. & REGS.) As the courts have recognized in other cases dealing with these provisions,

   . . . the key word in the statute is ‘appropriate.’ . . . (T)he language of these provisions does not mandate application of discipline in a routine fashion without

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¹ See, Rule 1120-10-.06(8), TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Personnel.*
regard to the nature or severity of the behavior it is intended to address. The supervisor has discretion to determine what punishment fits the offense.


6. Ms. Love had been employed by the State for slightly more than four years at the time of this incident. However, the criminal and deceptive nature of her conduct at the Post Office on March 9, 2007, and the negative impact it could have on the overall security of BMCX, cannot be discounted.

7. When the Warden and Commissioner considered the issue of punishment in this case, they had a wide range of options at their disposal. (See, Rule 1120-10-.07, TENN. COMP. R. & REGS.) Dismissal from employment is one of those options. Rule 1120-10-.07(5), TENN. COMP. R. & REGS. Pursuant to that regulation, “After minimum due process is provided, an employee may be dismissed by the appointing authority from his position for unacceptable conduct or performance of duties.” Rule 1120-10-.07(5)(a), TENN. COMP. R. & REGS. Without a doubt, Ms. Love’s conduct was unacceptable, and warranted a significant sanction. Security inside penal institutions is a matter of utmost concern; the surreptitious introduction of drugs or other contraband into a prison by anyone is a serious matter. In this case, although Ms. Love may not have actually been the one who brought illegal substances into the prison, the proof shows that she either set up, or allowed to be set up in her name, a post office box for the purpose of illegal drug activity. There is absolutely no valid reason for Ms. Love or anyone else to have added the names of Amber and Thelma Jones to the post office box application, and regardless of who added the names the fact remains that it was Linda Love’s signature on the application and Ms. Love was aware that an unlawful practice was taking place. The deceptive nature of the Grievant’s action and the potential harm that could have resulted, both weigh heavily in favor of dismissal from employment as the appropriate sanction. The courts have held that, when an employee’s conduct results in loss of effectiveness in his job, or adversely affects his Department’s ability to perform its mission, such a negative impact:

... may in 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.
8. 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 prohibited by The Rules of the Tennessee Department of Personnel and Policies of the TDOC; and (2) if so, whether the disciplinary sanction imposed by the Commissioner was appropriate. With respect to both issues, the Department has met its burden of proof. The evidence presented during the hearing amply supported the allegations of wrongdoing, and established a compelling argument in favor of termination of the Grievant’s employment with the Department.

Accordingly, IT IS HEREBY DETERMINED AND ORDERED that the Tennessee Department of Correction has met its burden of proof, and has established by a preponderance of the evidence that the Grievant, Linda Love, engaged in conduct prohibited by The Rules of the Tennessee Department of Personnel and Policies of the TDOC.

IT IS FURTHER DETERMINED AND ORDERED that the Grievant’s dismissal from State employment, imposed as a disciplinary sanction, is appropriate, and warranted by her conduct, and is therefore Upheld.

AND, IT IS FINALLY ORDERED that the Grievant’s appeal of the Commissioner’s decision to terminate her State employment is hereby DISMISSED.

This Initial Order entered and effective this 30th day of May, 2008.

__________________________________________
Rob Wilson
Administrative Judge
Filed in the Administrative Procedures Division, Office of the Secretary of State, this 30th day of May, 2008.

Thomas G. Stovall, Director
Administrative Procedures Division