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Johnny Crumby, Jr. vs. Metro Nashville

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April 14, 2016

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RE: In the Matter of: Johnny R. Crumby, Jr.

Docket No. 43.02-131703J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem

cc: Jennifer Tullos, Metropolitan Civil Service Commission

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

IN THE MATTER OF:

JOHNNY R. CRUMBY, JR.

DOCKET NO. 43.02-131703J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BE REVIEWED BY THE CIVIL SERVICE COMMISSION:

A PARTY MAY FILE A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **April 29, 2016**.

YOU MUST FILE THE PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX B AFFIXED TO THE INITIAL ORDER FOR NOTICE OF REVIEW PROCEDURES.

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

IN THE MATTER OF:

**Johnny Crumby, Jr.,
Grievant,**

DOCKET NO: 43.02-131703J

Vs.

**Metropolitan Nashville Police Depart.,
Respondent.**

INITIAL ORDER

This matter was heard on March 31, 2016, before Steve R. Darnell, Administrative Law Judge, assigned by the Department of State, Administrative Procedures Division, and sitting for the Civil Service Commission for the Metropolitan Government of Nashville and Davidson County (Metro). This is a Civil Service Rule §6.9 grievance, and pursuant to Rule §6.9 and intra-agency agreement, this matter is assigned to an ALJ employed by the Administrative Procedures Division for adjudication and issuance of an Initial Order which is reviewable by the Civil Service Commission. Attorney David L. Raybin represented Johnny Crumby, Jr. (Grievant) and the Metropolitan Nashville Police Department (NPD) was represented by attorneys Jennifer Cavanaugh Crim and Cynthia E. Gross.

ISSUES FOR DETERMINATION

1. Does NPD's policy §3.40.030 impermissibly conflict with the Civil Service Rule §3.4?
2. Does NPD's application of policy §3.40.030 to Grievant deny him rights provided by Civil Service Rules?

SUMMARY OF DETERMINATION

It is **DETERMINED** that NPD policy §3.40.030 impermissibly conflicts with Civil Service Rule §3.4 and denies Grievant his rights under the Civil Service Rules. This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Grievant is 41-year-old NPD police officer who has served in that role since 1996. He has served the NPD with distinction during his tenure. He has completed significant training in criminal investigations and has served at times as an investigator for the NPD.
2. Due to medical issues, NPD deemed Grievant unfit to serve as a police officer and he was transitioned to a medical retirement which began on August 21, 2014. This ended his service as a NPD police officer. Grievant left the NPD in good standing as that term is used in Rule §3.4.
3. Shortly thereafter, Grievant was advised by NPD that he could return to his prior duties with a medical waiver. The medical waiver was completed and Grievant returned to his service as a NPD police officer on October 1, 2014. This created a 40-day gap in his nearly 20 years of service with the NPD.
4. Grievant currently serves as a patrol officer with the NPD. In the recent past Grievant has applied to be listed as an eligible candidate for investigative positions with the NPD. These positions are not promotions in the sense that they provide more authority and pay but would be advancements in Grievant's career with the NPD.
5. Each time Grievant applied to be listed for consideration for an investigative position, he was advised by the NPD that he was not qualified because he had a break in service related to his short medical retirement.

6. The NPD has policy §3.40.030 in its department manual which provides in relevant part as follows:

E. For sworn positions other than patrol or appointed positions, the applicant shall have been employed as a Metropolitan Nashville Police Officer (defined as beginning at the time the applicant became a sworn member of the Police Department) **for a minimum of three (3) years of uninterrupted service immediately preceding** the date of the application for transfer.

This NPD policy has not been submitted to the Civil Service Commission for approval and therefore is not a “department rule” as that term is used in Civil Service Rule §1.1.

7. The NPD determined that Grievant’s 40-day medical retirement was an interruption in service and deemed him ineligible to be listed as a candidate for the investigative positions. Aggrieved by this decision, Grievant pursued this issue through the grievance process set forth in Rule §6.9 of the Civil Service Rules.

8. Grievant has shown, by a preponderance of the evidence, that the foregoing NPD policy impermissibly conflicts with Metro’s Civil Service Rules. Further, Grievant has shown, by a preponderance of the evidence, that application of the NPD’s policy to Grievant denies him his rights under the Civil Service Rules.

CONCLUSIONS OF LAW

1. Grievant brings this action pursuant to Rule §6.9 of Metro’s Civil Service Rules which provides in relevant part as follows:

An employee's claim that **he has been adversely affected by a violation, misinterpretation, misapplication or non-application of a specific law, ordinance, resolution, executive order, Civil Service Rule or written policy.** Exceptions are as noted in part A –non-grievable matters.

Employees and management should recognize that grievances can be helpful to an organization to call matters to the attention of officials when action is needed. If a grievance procedure is used properly, it can assist in establishing a harmonious and cooperative working relationship between employees of the Metropolitan

Government. The grievance procedure is used to give every employee who has a grievance the opportunity to express himself and to allow Metropolitan officials to take prompt action where needed. (§6.9 Introduction, emphasis added).

2. Grievant bears the burden of proof at all stages of the grievance process. Rule §6.9 F 4.
3. The objective, and hence applicability, of Metro's Civil Service Rules is stated as follows:

The purpose of these rules is to bring into the service of Metropolitan Government of Nashville and Davidson County a high degree of understanding, cooperation, efficiency and unity. These **rules provide a uniform human resources program for all employees**, with all the benefits such a program ensures. The fundamental objectives to be achieved by these rules are declared to be:

a. to promote and increase efficiency and economy in the Metropolitan Government.

b. to provide equal employment opportunities to all applicants and employees.

c. to develop a program of recruitment, advancement and tenure which will make employment with Metropolitan Government attractive as a career and encourage each employee to render his best services.

d. to establish a program based on merit for the hiring and promotion of employees **and to provide promotional opportunities** whenever possible to qualified employees.

e. to establish and promote high morale and enhance working conditions among Metropolitan Government employees **by providing a uniform personnel policy**, and opportunity for advancement. Rule §1.3 (emphasis added).

4. Metro departments are permitted to implement additional rules as long as the departmental rules **do not conflict** with the Civil Service Rules. Civil Service Rule §1.10 provides as follows:

Appointing authorities shall implement additional rules to govern their departments, specific rules which would apply to their departments only or are not covered in the Civil Service Rules. **These rules must not conflict with Civil Service Rules and Policies.** Departments will notify the appropriate employee representative groups in the department before proposing changes to the Commission. **Departmental rules shall be approved by the Civil Service Commission.** A copy of any proposed departmental rule shall be made available to employees within the department at least two weeks prior to Commission approval. Once approved, all employees of the department shall be furnished a copy of the rules, sign for the copy and have such acknowledgment placed in their HR file. (emphasis added).

5. Metro Civil Service Rules, Chapter 3, entitled “Employment Practices” provides in relevant part as follows:

The most recent period of service **will be connected** for former Civil Service and non-Civil Service employees provided they were previously employed for at least one year, resigned in good standing, **and return within one year** of termination.
...

If time is connected after a break in service, that time off the payroll will be deducted in determining the employee's **total service time**. In any case with the connection of service time there shall be no retroactive payment of benefits. §3.4 (emphasis added).

6. The NPD has adopted policy §3.40.030 in its department manual which provides in relevant part as follows:

E. For sworn positions other than patrol or appointed positions, the applicant shall have been employed as a Metropolitan Nashville Police Officer (defined as beginning at the time the applicant became a sworn member of the Police Department) **for a minimum of three (3) years of uninterrupted service immediately preceding** the date of the application for transfer.

This policy has not been considered and approved by the Civil Service Commission, and therefore, is not a Rule as that term is used in Civil Service Rules §1.10 cited above.

DISCUSSION

Grievant asserts that the NPD's policy §3.40.030 impermissibly conflicts with Civil Service Rules §3.4. Both the Rule and the NPD's policy are to be read and understood giving them their plain meaning in light of the Civil Service Rules objectives. Doing so, it is clear the policy conflicts with Rule §3.4. As such, the NPD is not permitted to apply its policy to Grievant, and instead must apply Rule §3.4 and connect Grievant's services. When Rule §3.4 is applied correctly Grievant has just short of 20 years of uninterrupted service at this time.

The NPD argues that Rule §3.4 only applies to the administration of benefits such as retirement, longevity pay, and accumulation of vacation leave. The NPD presents no legal authority or factual basis for its interpretation, and in fact, if such were offered, it would require an interpretation leading beyond the plain reading and meaning of Rule §3.4. Pursuing such an interpretation would be in conflict with the normal rules of statutory construction.

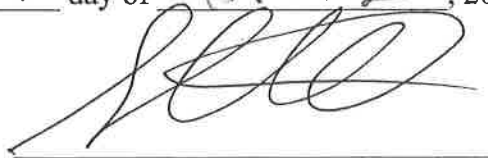
Additionally, Rule §3.4 offers indications that the NPD's interpretation is incorrect. First, Chapter 3 of the Civil Service Rules does not apply solely to benefits as summarized in its chapter title, "Employment Practices." Second, Rule §3.4 applies to both "former Civil Service and non-Civil Service employees" meaning that probationary employees are permitted to "connect service time" when most Civil Service benefits are not even available to them. Lastly, the employee benefits at issue, i.e. vacation time, retirement, and longevity pay are allocated based on total service time. This is specifically addressed in the second part of Rule §3.4 which provides, "If time is connected after a break in service, that time off the payroll will be deducted in determining the employee's total service time." If Rule §3.4 applied only to benefits, the rest of the Rule would be superfluous.

A plain reading of the Civil Service Rules and specifically Rule §3.4 indicates that Metro intended to connect service time for employees situated like Grievant. The NPD's attempt to supplant Rule §3.4 with its department policy is impermissible.

IT IS CONCLUDED THAT Grievant has shown, by a preponderance of the evidence, that NPD policy §3.40.030 impermissibly conflicts with Civil Service Rule §3.4. By applying its policy to Grievant, the NPD infringes Grievant's rights under the Civil Service Rules. Accordingly, the NPD is not to apply its policy §3.40.030 to Grievant but shall instead apply Civil Service Rule §3.4 to Grievant's circumstance and connect his service time making him eligible as a candidate for investigator positions.

IT IS THEREFORE ORDERED that the Grievance appeal of Johnny Crumby, Jr. is sustained.

This Order entered and effective this 12TH day of APRIL, 2016.



Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 14TH day of APRIL 2016.



J. Richard Collier, Director
Administrative Procedures Division

APPENDIX B TO INITIAL ORDER

NOTICE OF REVIEW PROCEDURES

Review of Initial Order

(1) Pursuant to the provisions of T.C.A. §4-5-315, notice is hereby given that this Initial Order will be reviewed by the Civil Service Commission. Pursuant to Civil Service Commission Policy 6.8 A-1, paragraph 0, the parties may file written briefs with the Commission.

(2) A party may file a petition for reconsideration of this Initial Order, within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. See T.C.A. §4-5-317 on petitions for reconsideration.

After the disposition of the petition for reconsideration, the Initial Order will be subject to the Civil Service Commission's review as set forth in paragraph (1) above.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the entry date of a Final Order by the agency, a party may petition the agency for reconsideration of the Final Order. If no action is taken within twenty (20) days for filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in Davidson County Chancery Court within sixty (60) days of the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.