IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 10, 2016 Session

# CHARLES VAN MORGAN v. THE TENNESSEE CIVIL SERVICE COMMISSION, ET AL.

**Appeal from the Chancery Court for Davidson County**
**No. 14785II Carol L. McCoy, Chancellor**

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**No. M2016-00034-COA-R3-CV – Filed February 28, 2017**

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Judicial review of a decision of the Tennessee Board of Appeals upholding the termination of a trooper with the Tennessee Highway Patrol for his conduct during a traffic pursuit. The trial court upheld the trooper's termination. On appeal, the trooper asserts that the administrative judge who heard the case erred in disregarding expert testimony and, as a consequence, the Board's decision is unsupported by substantial and material evidence. Discerning no error, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

Brock Parks, Nashville, Tennessee, for the appellant, Charles "Van" Morgan.

Herbert H. Slatery, III, Attorney General and Reporter; Andrée S. Blumstein, Solicitor General; and Eugenie B. Whitesell, Senior Counsel, for the appellee, Tennessee Civil Service Commission/Board of Appeals and Tennessee Department of Safety and Homeland Security.

## OPINION

### I. FACTUAL AND PROCEDURAL BACKGROUND

This appeal arises from the termination of Officer Charles Morgan, formerly a trooper with the Tennessee Highway Patrol. The salient facts surrounding the circumstances leading to his termination are contained in the Initial Order entered by the administrative judge assigned to hear Mr. Morgan's appeal and are incorporated below:

1. The Grievant was first employed in 2002 by the Department of Safety in Commercial Vehicle Enforcement, and in 2004, began his service as a Trooper in the Tennessee Highway Patrol, the law enforcement agency within the Tennessee Department of Safety. During his tenure with the Highway Patrol, he received multiple commendations for arresting a large number of DUI offenders.

2. During the early morning hours of November 26, 2011, the Grievant was assigned to perform over-night traffic duty in Knox County, Tennessee. At about 3:30 that morning, he saw a silver car traveling toward him in excess of the posted speed limit [79 MPH in a 40 MPH zone].

3. When the car passed the Grievant's patrol car, the Grievant activated his emergency equipment, turned around, and attempted to stop the car. When it failed to stop, the Grievant initiated a pursuit, following the car onto Anderson Pike, a mostly rural road in Knox County. Although the silver car was some distance ahead of the Grievant's car, he was able to follow by watching the car's tail lights. During the pursuit, the Grievant's car reached speeds in excess of 80 MPH.

4. When the pursued car drove over a small rise in the road, the Grievant lost sight of him. While out of the Grievant's sight, the driver apparently lost control of the silver car, failed to negotiate a slight left curve, and crashed his car into a tree less than fifteen (15) feet to right of the roadway, killing the driver on impact.

5. Moments later, the Grievant arrived at the crash scene. As he topped the rise in the road and was following the curve to the left, the Grievant's headlights illuminated the crash scene. The Grievant's in-car video recorder captured the silver car, crashed against the tree, its hood sprung open, and its tail light glowing.[3] As he passed the crash site, the Grievant slowed his car [from 51 MPH to 45 MPH, then to 21 MPH], but he did not stop.

6. The Grievant then sped up, and radioed dispatch that he had lost sight of the pursued vehicle, and was terminating the pursuit. Less than a half-mile down the road, he pulled over at the side of the road, where he waited until he heard a radio dispatch message that a crash with injuries was reported at the location that he had just passed.

7. The Grievant then returned to the crash site, and parked with his headlights illuminating the scene. The silver car, crashed against the tree, was fully engulfed in flames, with the driver inside. The Grievant left his

car with his fire extinguisher, and stood some distance from the burning vehicle, waving the fire extinguisher around and discharging it toward the tops of the flames.[4] [He later admitted to two of his supervisors (Lt. Thomas and Sgt. Heatherly) that "I got out and got a fire extinguisher just to make it look good. . . I knew he was dead. .. But you know, you got to do that for the media and everybody else. I was just trying to put on a show. . ."]

8. After returning to his car, he telephoned his wife, and asked her to look up the phone number for the Police Benevolent Association (the organization that arranges for legal representation of officers accused of wrongdoing).

[3] Although it is difficult to definitively discern from the in-car video recording, it is possible that the car was already on fire and smoking when the Grievant passed it. [Video recording: Hearing Exhibit #16]

[4] The Department teaches Troopers to aim fire extinguishers at the base of flames, at their source.

On December 14, 2011, Trooper Morgan was interviewed by representatives of the Internal Investigations Unit of the Department of Safety and Homeland Security ("DSHS") regarding the events that transpired on the night of the accident. On January 30, 2012, in accordance with the procedures for minimum due process in disciplinary actions contained at Department of Human Resources ("DHR") Rule 1120-10-.02, Mr. Morgan received a letter from Colonel Tracy Trott of the Highway Patrol informing him that Colonel Trott was recommending to the Commissioner of DSHS, Bill Gibbons, that Morgan's employment be terminated for violations of DHR Rule 1120-10-.05 (3), (11), and (27)[1] and Tennessee Department of Safety ("TDOS") General Order 216-1,

[1] At the time Mr. Morgan was sanctioned, DHR Rule 1120-10-.05 read, in pertinent part:

The following are examples of acts that may warrant disciplinary action. This list is not all-inclusive and shall not limit an appointing authority's discretion in disciplinary matters:
***
(3) Negligence in the performance of duties;
***
(11) Conduct unbecoming an employee in state service;
***
(27) For the good of the service as outlined in T.C.A. § 8-30-326.

TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULES 1120-10-.05(3), (11), & (27), COMP. R. & REGS. ch. 1120-10-.05 (May 2011). This rule was repealed in October, 2012.

Paragraphs II, IX, A (1, 2), B (4, 5, and 19).[2] Pursuant to the minimum due process procedures, Mr. Morgan was offered a discussion, which was conducted by Captain Steven Hazard on February 9, 2012. Captain Hazard concurred with Colonel Trott's recommendation and on February 10, Commissioner Gibbons issued Trooper Morgan a letter terminating his employment effective February 20, 2012.

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[2] The portions of TDOS General Order 216-1, Paragraphs II, IX, A (1, 2), B (4, 5, and 19) cited in Colonel Trott's letter are as follows:

> II. POLICY:
> The Tennessee Department of Safety and Homeland Security is committed to providing the highest quality of service to the public. The Department will not tolerate any employee conducting themselves [sic] in a manner which will reflect negatively upon the professional image of the Department.
> ***
> IX: CAUSES FOR DISCIPLINARY ACTION:
>
> A. Causes for disciplinary action fall into two (2) 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;
>
> ***
> B. It is not possible to list every cause in which disciplinary action may be taken. The following causes are examples of those considered for disciplinary action and should not be considered the only causes.
> ***
> 4. UNBECOMING CONDUCT
> a. Employees shall conduct themselves at all times, on and off duty, in a manner as to reflect most favorably upon themselves and/or the Department.
> ***
> 5. UNSATISFACTORY JOB PERFORMANCE
> ***
> b. Employees shall perform their duties in a manner which would tend to establish and maintain the highest standards of efficiency while carrying out the functions and objectives of the Department.
>
> c. Examples of unsatisfactory performance include, but are not limited to, the following:
> ***
> (5). Failure of members to take appropriate enforcement action or neglect to protect the scene of a crime, crash, and/or failure to properly investigate such;
> ***
> 19. NEGLECT OF DUTY
> a. Employees shall not be inattentive to duty or neglect their duties.

TENNESSEE DEPARTMENT OF SAFETY, GENERAL ORDER 216-1 (30 JUNE 2011).

Mr. Morgan appealed his termination to the Tennessee Civil Service Commission[3] and a hearing was held on June 26, 2013, before Administrative Judge Randall LaFevor, who issued an Initial Order on March 17, 2014 dismissing the appeal; in accordance with Tennessee Code Annotated section 4-5-314(b), the Initial Order became the Final Order of the Board on April 1. Mr. Morgan timely filed a Petition for Review in Davidson County Chancery Court, alleging that the Board's decision "violates the standards set forth in T.C.A. § 4-5-322(h)."

The court entered a Memorandum and Order on December 1, 2015, affirming the Board's decision. Mr. Morgan appeals, contending that the administrative judge erred in failing to consider the testimony of two expert witnesses; he also asserts generally that the evidence does not support his termination.

## II. STANDARD OF REVIEW

Judicial review of agency decisions are conducted in the chancery court in accordance with the Uniform Administrative Procedures Act ("UAPA"), codified at Chapter 5 of Title 4 of the Tennessee Code, specifically, Tennessee Code Annotated section 4-5-322(b)(1)(A); the decision of the chancery court may then be appealed to this Court pursuant to Tennessee Code Annotated section 4-3-323.

Review under the UAPA is narrow, rather than under the broad standard of review used in other civil appeals. *Wayne County v. Tennessee Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 279 (Tenn. Ct. App. 1988). Specifically, Tennessee Code Annotated section 4-5-322(h) provides that:

> The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
> (5) (A) Unsupported by evidence that is both substantial and material in the light of the entire record.

[3] Mr. Morgan's appeal was initially filed with the Tennessee Civil Service Commission; effective October 1, 2012, that Commission ceased to exist and its duties were transferred to the Tennessee Board of Appeals.

> (B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn. Code Ann. § 4-5-322(h).[4] When we review the decision of the trial court, we are to determine whether the trial court properly applied that standard of review. *See Jones v. Bureau of TennCare*, 94 S.W.3d 495, 501 (Tenn. Ct. App. 2002) (citing *Papachristou v. Univ. of Tennessee*, 29 S.W.3d 487, 490 (Tenn. Ct. App. 2000)).

## III. ANALYSIS

While Mr. Morgan does not specify what standards in section 4-5-322(h) he contends the agency decision violated, the arguments set forth in his brief clearly address the evidentiary basis of the decision; accordingly, we focus on section 4-5-322(h)(5) in our resolution of this appeal.

### A. Expert Witness Testimony

Mr. Morgan frames the argument relative to the expert testimony as follows: "Whether the Chancery Court erred [in] failing to consider the Administrative Judge's reliance upon his own perception as a lay person to determine scientific matters clearly beyond the scope of his knowledge and capabilities." In framing the argument in this fashion, however, Mr. Morgan erroneously implies that the trial court had an obligation to go beyond the standard of review explained in *Wayne County* and make its own resolution of factual issues. Under section 4-5-322(h), judicial review does not extend to making a fresh determination of questions of fact but, rather, only extends to determine whether the evidence supports the administrative decision. *See* Tenn. Code Ann. § 4-5-322(h)(5)(A) and (B).

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[4] The scope of review under section 4-5-322 was explained by this court in *Wayne County v. Tennessee Solid Waste Disposal Control Bd.*:

> Courts defer to the decisions of administrative agencies when they are acting within their area of specialized knowledge, experience, and expertise. Accordingly, judicial review of an agency's action follows the narrow, statutorily defined standard contained in Tenn. Code Ann. 4–5–322(h) rather than the broad standard of review used in other civil appeals. The narrower scope of review used to review an agency's factual determinations suggests that, unlike other civil appeals, the courts should be less confident that their judgment is preferable to that of the agency. Courts do not review the fact issues de novo and, therefore, do not substitute their judgement [sic] for that of the agency as to the weight of the evidence, even when the evidence could support a different result.

756 S.W.2d 274, 279 (Tenn. Ct. App. 1988) (internal citations omitted).

The expert witnesses were Bruce Siddle, called on behalf of Mr. Morgan, and J.G. Pollack, called on behalf of DSHS.[5] In the Initial Order, the administrative judge stated that the testimony of the expert witnesses did not assist in the resolution of the factual issues and, accordingly, disregarded it.[6] Mr. Morgan argues that the administrative judge

[5] Much of the testimony in the hearing was presented by deposition. At Dr. Pollack's deposition, counsel for DSHS made the following statement:

> This case was originally set for May 2, this morning. [Mr. Morgan's counsel] has been hospitalized and is unable to attend the hearing today. Due to the fact the state has gone to some expense to bring its expert into the State of Tennessee to testify at this hearing.
>
> In consultation with the judge, it was decided we would attempt to do an evidentiary deposition of as many witnesses as we could between now and the scheduling of the hearing so we can get this hearing over with as quickly as possible.
>
> We attempted to make contact with Brock Parks, the Plaintiff's attorney on this case. And we were unable to do so because, I assume, he's incapacitated at the hospital. We are going to attempt to take an evidentiary direct testimony of Dr. Pollack for purposes of the civil service hearing. If, however, Mr. Parks, when he gets back to where he can get in contact with us decides that he doesn't want to agree to this, then this will not be entered into the record. . . .

Consistent with this statement, at the hearing Dr. Pollack's deposition was introduced as an exhibit and Mr. Morgan's counsel permitted to cross-examine him.

Mr. Siddle's deposition for evidentiary purposes was taken on August 28, 2013 and filed as part of the record on November 18; in addition, Mr. Siddle participated in the hearing by conference telephone. The depositions of Knox County District Attorney Randall Nichols, DSHS Commissioner Bill Gibbons, THP Colonel Tracy Trott, THP Sergeant Stacy Heatherly, Trooper James Pillars with the THP Critical Incident Response Team, THP Sergeant Shannon Brinkley with the THP Research Planning Unit, Sergeant Christopher Dye with the THP Training Division, and Major Cheryl Sanders, who was THP captain of the Knoxville District in November 2011, were introduced as exhibits at the hearing, as well. Also introduced were seven exhibits to the deposition of Sergeant Anderson Shelton with the THP Critical Incident Response Team.

[6] Footnote six of the order states:

> It is worth noting that both parties to this case offered testimony and analysis from "expert witnesses" on the issue of whether it was likely that the Grievant could have seen and/or recognized the crashed vehicle at the side of the road. While their input was interesting, their testimony was of little value. Neither witness recognized the other as an expert in the field. Neither recognized the other's methodology as worthwhile. Although they were both allowed to testify at the hearing, upon further reflection and consideration, it is concluded that their testimony failed to "substantially assist the trier of fact to understand the evidence or to determine a fact in issue." [Rule 702, Tennessee Rules of Evidence.] Accordingly, their testimony was deemed to have little value, and failed to either enhance or negate the very clear evidence provided by the in-car video recording, which supports the findings set out in the Order. The testimony of both "expert witnesses" was therefore disregarded. Finders of fact "are not required to accept the

should have relied on the expert proof inasmuch as "numerous human factors influencing Trooper Morgan's sight, recognition and response abilities during the pursuit and especially at the time he passed the crashed vehicle . . . are not only critical to a determination of his observations but cannot be made by lay opinion without the assistance of expert testimony."

Mr. Siddle, tendered as an expert in the field of human factors[7] testified that he is a managing partner of a company known as the Human Factor Research Group; that in his employment he evaluates an individual's ability to perform "in precision, performance in dynamic, time-compressed, high-risk environment, particularly with law enforcement officers"; that he has been a consultant for various military and governmental agencies; and that he has conducted research into "the elements of reaction time, movement time, response time." Mr. Siddle was asked to opine as to Mr. Morgan's ability during the car pursuit to see that the car he was chasing had crashed; specifically, he was asked and responded:

> A. . . . so what we're evaluating here is Trooper Morgan's ability in that time period and with that exposure to be able to perceive, recognize, and be able to respond while he's in the middle of a pursuit, navigating the pursuit in a safe manner, but yet we are now trying to apply judgment to what he saw in that time period, and that video captures what we are truly measuring today.
>
> Q. And based on the qualifications that we discussed earlier and based on your work in this matter, were you able to reach an ultimate opinion as to the relevant issue?
>
> A. Well, my opinion is, is that Trooper Morgan should not be held accountable for what he forgot to see or what he should have been seeing for less than two seconds during a 30-minute pursuit.[8]

Dr. Pollack testified that he is a board certified human factors scientist with Robson Forensic, Inc., a forensic engineering firm;[9] that he has worked in the field of human factors for approximately thirty-five years; and that he has a Ph.D in experimental psychology with an emphasis on neuroscience, and has studied visual sciences. Dr.

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opinion of any expert." Tennessee Pattern of Jury Instructions – Civil, 2.30 Expert Testimony - Determination of Weight.

[7] Mr. Siddle explained that "the definition of human factors is the study of what human capability and human limitations are within a specific domain."

[8] Mr. Siddle testified that he examined Colonel Trott's termination letter, the in-car video, the police department's training material, and the visual field in arriving at his opinion,

[9] Dr. Pollock did not identify the organization or agency by which he is certified.

Pollack testified regarding the reliability of the in-car video to discern what Mr. Morgan saw during the course of the car pursuit.[10] Dr. Pollock testified that he conducted an on-site inspection of the scene and retraced the route of the crash at low and high speeds and took photographs. He opined that the video was insufficient to show what Mr. Morgan had seen because the video does not "have the same detail as the human eye" and because the video camera "used does not reflect the dynamic range of the human eye."

The admissibility and use of expert testimony is governed by Article VII of the Tennessee Rules of Evidence, specifically Rule 702. These rules also apply in administrative hearings brought under the UAPA. *Martin v. Sizemore*, 78 S.W.3d 249, 273 (Tenn. Ct. App. 2001).[11] It is well established that the trier of fact may disregard expert testimony. *Billingsley v. Waggener*, No. M2001-01015-COA-R3-CV, 2002 WL 12990, at *5 (Tenn. Ct. App. Jan. 4, 2002) (citing *England v. Burns Stone Company, Inc.*, 874 S.W.2d 32, 38 (Tenn.Ct.App.1993). "Expert testimony is not ordinarily conclusive, but is purely advisory in character, and the trier of fact may place whatever weight it chooses upon such testimony and may retract it if it finds that it is inconsistent with the facts or otherwise unreasonable. *England v. Burns Stone Company, Inc.*, 874 S.W.2d 32, 38 (Tenn. Ct. App. 1993) (citing *Gibson v. Ferguson*, 562 S.W.2d 188, 190 (Tenn. 1976).

The administrative judge determined that the testimony of neither expert assisted the court in rendering its decision, and afforded more weight to the in-car video recording. As the finder of fact, the administrative judge was free to do so.[12] The

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[10] In her deposition, Sergeant Brinkley testified regarding the technical aspects of the L3 program which "is our digital cameras that we have in the trooper patrol vehicles."

[11] Contested case proceedings are not governed exclusively by the Tennessee Rules of Evidence. Tenn. R. Evid. 101 adv. Comm'n cmt. However, the rules of evidence must be followed except when it is necessary for the agency to "ascertain facts not reasonably susceptible to proof under the rules of court." In this circumstance, evidence not otherwise admissible under the Tennessee Rules of Evidence may be admitted in an administrative proceeding "if it is of a type commonly relied upon by reasonable prudent men [or women] in the conduct of their affairs." Tenn. Code Ann. § 4-5-313(1) (1998).

*Martin*, 78 S.W.3d at 273 n. 13.

[12] In affirming the administrative judge's decision, the chancery court acknowledged the weight assigned to the expert testimony:

> The main issue in this case is whether, as Mr. Morgan drove past the crash site, he saw and recognized, or should have seen and recognized, that the silver car he had been pursuing had crashed less than 15 feet off the side of the road. In support of his assertion that he did not realize that the car he saw had crashed, or recognize it as the car he had been following, Mr. Morgan presented the testimony and analysis of Brude [sic] Siddle, the managing partner of the Human Factor Research Group. To support their contention that Mr. Morgan saw or should have seen that the car had crashed, and should have recognized it as the silver car he had been chasing, the Respondents presented the

resolution of the factual issues in this case did not require expert testimony, and we discern no error in the administrative judge's decision to disregard the opinions.

## B. Substantial and Material Evidence[13]

In addition to his argument that a consideration of the expert testimony would lead to a contrary result, Mr. Morgan argues that "the ALJ and Chancery Court undertook a review of ancillary but irrelevant testimony regarding the fall-out from the Department's knee-jerk reaction to the crash that forms the basis of Trooper Morgan's termination" and that "[t]o affirm the termination of Trooper Morgan based on statements borne out of political expediency when the scientific evidence preponderates to the contrary violates the fundamental principles of due process, fairness, and equity."

Again, Mr. Morgan erroneously implies that the trial court was permitted to make its own resolution of factual issues; our review is limited to whether there is substantial and material evidence to support the termination decision. "The 'substantial and material

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testimony and analysis of Jay Pollack, a human factors scientist with Robson Forensic, Inc. The ALJ considered the testimony of both witnesses, but stated in footnote 6 of the Initial Order that he ultimately did not take the expert witness testimony into account in arriving at a decision as he found it to be of little value.

[13] The parties entered the following stipulations, which we also consider in our resolution of this appeal:

1. The personnel file of Grievant is entered as an exhibit, with no objection.

2. DOHR Rules 1120-10-.05 (3), (11) and (27) and DOS General Order 216-1, II, IX, A (1,2), B (4, 5 and 19) are entered as exhibits, with no objection.

3. On November 26, 2011, Grievant, Charles Van Morgan, was employed as a trooper by the Tennessee Highway Patrol. Grievant was based in District 1 which includes Knox County. Grievant was hired by the Department in November 2002 and was terminated on February 21, 2012.

4. On November 26, 2011, at approximately 3:32 a.m., Grievant, while on patrol in Knox County, engaged in a pursuit of a speeding silver vehicle which was later identified as being driven by Gordon Anito. Anito's car crashed into a tree and Anito died on impact. Grievant was assigned to the midnight shift. Grievant complied with G.O. 411, the Department's policy concerning pursuits.

5. The Anito vehicle crashed on Andersonville Pike located in Knox County.

6. The Department's records reflect that Grievant has engaged in eight (8) high speed pursuits, including the Anito pursuit.

7. The Department's records reflect that Grievant had received numerous commendations for arresting a high number of DUI's.

evidence' standard contained in Tenn. Code Ann. § 4-5-322(h)(5) is couched in very broad language." *Wayne County*, 756 S.W.2d at 280. While what amounts to substantial and material evidence is not defined by the statute, "[i]n general terms, it requires something less than a preponderance of the evidence, but more than a scintilla or glimmer." *Id*. (internal citations omitted). We have previously determined that the administrative judge acted within its discretion in assigning no weight to the expert testimony. Accordingly, the question remaining is whether there is substantial and material evidence to support the determination that Mr. Morgan's conduct violated the DHR Rule and TDOS General Order, that Mr. Morgan could no longer work as a trooper, and that he was properly terminated "for the good of the service."

Evidence in the record includes the in-car video of the incident; testimony by Colonel Trott, who stated, after reviewing the in-car video and performing an inspection of the crash scene,[14] that Mr. Morgan "saw the crash and chose to ignore it"; testimony by District Attorney General Randall Nichols, who stated that Mr. Morgan's credibility was called into question as a result of the incident and that, as a result, his office dismissed all pending charges in Knox County filed by Mr. Morgan rather than have him testify in court; and testimony by Commissioner Gibbons who concluded, upon reviewing the in-car video, that Mr. Morgan "either intentionally drove by the car crash or he did not use due diligence as a trooper," and that, based on Mr. Morgan's conduct, the General Nichols' decision to dismiss Mr. Morgan's cases, and Mr. Morgan's tarnished credibility, Mr. Morgan could not work in the Department as a trooper.[15]

Again, Mr. Morgan asks this court, as he did the trial court, to reweigh the evidence; this is impermissible under our standard of review. *See Jackson Mobilphone Co., Inc. v. Tennessee Public Service Comm'n.*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993) ("The court need not reweigh the evidence…The evidence will be sufficient if it furnishes a reasonably sound factual basis for the decision being reviewed). Viewed in its entirety, the record contains substantial and material evidence that Mr. Morgan engaged in conduct prohibited by DHR Rule 1120-10-.05 and TDOS General Order 216-1, and that the disciplinary sanction imposed was appropriate.

[14] Colonel Trott testified that he inspected the scene and drove the scene, stating, "I drove it in dark. I drove the same type of vehicle he drove. I tried to drive it at the same speeds he was driving."

[15] There was also extensive testimony from members of the THP Critical Incident Response Team, Research Planning Unit, and Training Division. In resolving the factual issues, the administrative judge made the determination that the resolution of the issues did not require expert proof and, upon review of the entire evidence, we agree with the trial court that the disregard of the opinions of either Mr. Siddle or Mr. Pollack was not error.

## IV. CONCLUSION

For the foregoing reasons, the judgment of the chancery court is affirmed and the case is remanded with instructions to remand the case to the Tennessee Board of Appeals for further proceedings as may be necessary.

RICHARD H. DINKINS, JUDGE