

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
January 23, 2014 Session

**TORRANCE RANDLE v. STATE OF TENNESSEE**

**Appeal from the Chancery Court for Davidson County  
No. 121538III Ellen H. Lyle, Judge**

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**No. M2013-01497-COA-R3-CV - Filed March 13, 2014**

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Civil Service Employee filed a grievance with the Civil Service Commission complaining he was not given supervisory responsibilities in accordance with the job description that was posted when he accepted the position. The administrative law judge dismissed Employee's grievance because it was a "non-grievable matter" as that term is defined in the rules promulgated by the Department of Human Resources, leaving the Civil Service Commission without subject matter jurisdiction. Employee petitioned the Chancery Court for judicial review. The Chancery Court affirmed the administrative law judge's dismissal of Employee's grievance. Employee appealed the trial court's judgment to the Court of Appeals, and we affirm the dismissal of Employee's petition.

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

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Jessie Ray Akers, Jr., Mt. Juliet, Tennessee, for the appellant, Torrance Randle.

Robert E. Cooper, Jr., State Attorney General and Reporter; Bill Young, Solicitor General; and Eugenie B. Whitesell, Assistant Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. BACKGROUND**

Torrance Randle is employed as an accountant by the Tennessee Department of Finance and Administration ("F & A"). In May 2010 he was hired to fill the position of "Accountant 3." The summary of the job at that time indicated the position "[u]nder general supervision, is responsible for professional accounting work of considerable difficulty, and

supervisory work of average difficulty, and performs related work as required.”

Mr. Randle asserts that he accepted the position of Accountant 3 for the express purpose of obtaining experience as a supervisor. When he was not assigned supervisory duties, Mr. Randle filed a grievance with the Commissioner of F & A. The Commissioner responded by informing Mr. Randle that his complaint “is not a grievable issue under the laws and regulations of the State of Tennessee,” and that he therefore considered the matter closed.

Mr. Randle requested a “fifth step hearing” with the Civil Service Commission, as he is permitted to do under the rules promulgated by the Department of Human Resources (“DHR”). TENN. COMP. R. & REGS. §1120-11-.04(5). Mr. Randle’s case was assigned to an administrative law judge in April 2012, and shortly thereafter F & A filed a motion to dismiss based on Mr. Randle’s failure to raise a grievable matter, as that term is defined.

The administrative law judge entered an order granting F & A’s motion to dismiss, stating:

Pursuant to Rule 1120-11-.07(16), “matters relating to internal agency or program management based on discretionary decision making” are not grievable before the Commission. Therefore, the Commission has no legal authority to hear such claims. The level of difficulty of the work assigned to Grievant and whether he is assigned supervisory duties is clearly a discretionary management decision by the Department. As such, Grievant’s complaints are not grievable before the Commission. The Department’s motion to dismiss is proper and must be granted.

Mr. Randle filed a petition for reconsideration, which was denied. Mr. Randle then appealed the administrative law judge’s decision to the Civil Service Commission. Following a review in August 2012, the Commission upheld the administrative law judge’s decision to dismiss Mr. Randle’s grievance. Mr. Randle filed a petition for reconsideration with the Commission, which was denied.

In October 2012 Mr. Randle filed a petition for review with the Chancery Court pursuant to Tenn. Code Ann. § 4-5-322. The trial court set a hearing date for May 30, 2013, and set deadlines by which the parties were to file briefs. The record does not include a transcript of the hearing before the trial court, but the trial court issued a Memorandum and Order Affirming Order of Dismissal in June 2013.

The trial court found the following facts:

The undisputed facts of this case are that the petitioner is an Accountant for the Tennessee Department of Finance and Administration. Since May 15, 2010, the petitioner's job classification with the Department has been "Accountant 3." The summary for this position states: "Under general supervision, is responsible for professional accounting work of considerable difficulty and supervisory work of average difficulty; and performs related work as required."

The grievance filed by the petitioner with the Tennessee Civil Service Commission is that the Department is not providing the petitioner: (1) accounting work of considerable difficulty and (2) supervisory duties. This, the petitioner asserts, is contrary to and violates the job description.

It is undisputed by the Department that certain job duties associated with petitioner's position, including supervisory responsibilities, has been shifted to a level below Mr. Randle's classification of Accountant 3. Significantly, though, Mr. Randle's salary has not been affected. It remains an Accountant 3 salary.

The trial court then explained that the Civil Service Commission only has the authority to consider matters that are "grievable" pursuant to the rules promulgated by the DHR. When Mr. Randle filed his grievance, "Grievable Matters" were defined in TENN. COMP. R. & REGS. § 1120-11-.06<sup>1</sup> and were limited to:

- (1) Disciplinary suspension or demotion;
- (2) Disciplinary dismissal;
- (3) Any disciplinary action or layoff that the employee believes is the result of discrimination prohibited by T.C.A. § 8-50-103 or T.C.A. § 4-21-401. The employee may file such grievance directly with the appointing authority, warden, or superintendent;

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<sup>1</sup>The Civil Service Commission reviewed this case under Tennessee Code Annotated § 8-30-328 and Tennessee Department of Human Resources Rules and Regulations in effect at that time. The Legislature subsequently amended the Civil Service Act in 2012, and the Rules and Regulations relating to the Act were also amended. Because this case originated prior to the amendments, this case is governed by the previous Act and Rules and Regulations.

- (4) Involuntary geographical transfer of an employee or official duty station more than fifty (50) miles. Distance will be determined by drawing a circle, with a fifty (50) mile radius, centered on the previous official duty station;
- (5) Non-compliance with an approved reduction in force plan by an appointing authority;
- (6) Prohibited political activity as outlined in T.C.A. Title 2, Chapter 19 (the “Little Hatch Act”);
- (7) Coercion of an employee to waive his right to consideration on an eligibles list;
- (8) Final performance evaluations based on procedural grounds to the fourth step; and
- (9) Other matters determined at the sole discretion of the appointing authority to be grievable, but not included in section 1120-11-.07 below.

The trial court then reviewed the “Exceptions and Non-Grievable Matters,” which were also defined in the DHR regulations:

- (1) Actions that affect employees who are not career employees;
- (2) Actions that affect employees who are not covered under T.C.A. § 41-22-407(d)(3);
- (3) Actions that affect an employee serving an initial probationary period;
- (4) Normal supervisory counseling and management;
- (5) Non-selection for promotion when the appointment was in compliance with these Rules and the Act;
- (6) Oral and written reprimands;
- (7) Performance evaluation ratings;
- (8) Actions resulting from suggestions adopted by the State Employee Suggestion Award Board;

- (9) Actions resulting from reductions in force when the actions by the appointing authority were in compliance with statutes and rules;
- (10) Shift, post, and overtime assignments;
- (11) Reasonable work assignments outside those normally associated with the employee's assigned job classification;
- (12) Salary range assigned to classifications;
- (13) Administration of salary increases established and funded by the legislature;
- (14) Classification of position;
- (15) Denial of leave requests except as provided for in T.C.A. § 8-50-110 and T.C.A. § 8-50-802;
- (16) Matters relating to internal agency or program management based on discretionary decision making;
- (17) Demotions during subsequent probation when the demotion is to the job classification the employee held prior to the promotion and at a salary rate no lower than the salary rate had the promotion not occurred;
- (18) Agency rules or policies which do not conflict with statutes, rules, or policies of the Department of Human Resources; and
- (19) Any other matter over which an appointing authority or the Commission has no control or jurisdiction or is without the authority to grant requested relief.

TENN. COMP. R. & REGS. § 1120-11-.07.

The trial court determined that Mr. Randle's claim that F & A "has refused to assign him work as a supervisor or perform accounting work of considerable difficulty" is not included in any of the categories of grievable matters listed in Rule 1120-11-.06. Instead, the trial court concluded that Mr. Randle's claim is covered by subsection (16) of the non-grievable matters listed in Rule 1120-11-.07:

As reasoned by the Administrative Law Judge, whether Mr. Randle was assigned supervisor duties is clearly a discretionary management decision by [F & A]. . . . This common-sense reading of the rule applied to the real-life work setting is adopted by the Court. It is necessary for management to have discretion in distributing work assignments.

The trial court rejected Mr. Randle's argument that the job description for an Accountant 3 constituted a policy or rule that F & A was required to follow. Rather, the court explained that the job description "is part of DHR's plan to classify State positions for purposes of setting compensation." According to the trial court:

[N]othing in the civil service laws or regulations mandates that an employee perform all the work activities listed in a job description, including, as in Mr. Randle's case, supervisory work by an Accountant 3. DHR simply classifies positions using the job description to set compensation.

On appeal, Mr. Randle contends the trial court erred in dismissing his petition for review on the basis that his complaint is not grievable.

## II. ANALYSIS

When he filed his Petition for Review in the Chancery Court, Mr. Randle was seeking judicial review of the Civil Service Commission's decision upholding the administrative law judge's decision granting F & A's motion to dismiss Mr. Randle's grievance. Judicial review of administrative decisions is provided for by the Uniform Administrative Procedures Act ("UAPA"), Tenn. Code Ann. § 4-5-301 *et seq.*, and is limited to the record before the administrative agency. Tenn. Code Ann. § 4-5-322(g). A trial court may affirm the agency's decision or remand the case for further proceedings. Tenn. Code Ann. §4-5-322(h). The court may reverse or modify the agency's decision only if the petitioner's rights 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.

(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).

A party aggrieved by a final decision from the trial court may obtain further review by the Court of Appeals. Tenn. Code Ann. § 4-5-323(a). The Court of Appeals uses the same standard of review that the trial court uses. *Humana of Tennessee v. Tennessee Health Facilities Comm'n*, 551 S.W.2d 664, 668 (Tenn. 1977); *Dickson v. City of Memphis Civil Serv. Comm'n*, 194 S.W.3d 457, 464 (Tenn. Ct. App. 2005). A concurrent finding of fact by the agency and the trial court is conclusive on the Court of Appeals. *CF Indus. v. Tennessee Publ. Serv. Comm'n*, 599 S.W.2d 536, 540 (Tenn. 1980). Appellate review of issues of law is *de novo*, with no presumption of correctness. Tenn. R. App. P. 13(d); *Whaley v. Perkins*, 197 S.W.3d 665, 670 (Tenn. 2006); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

There do not appear to be any facts in dispute. Thus, our review is limited to determining whether Mr. Randle's complaint about his job responsibilities as an Accountant 3 constitutes a grievable matter. If the answer is no, then the Civil Service Commission is without subject matter jurisdiction to review Mr. Randle's complaint, and we will affirm the trial court's judgment dismissing Mr. Randle's petition.

Mr. Randle first contends that DHR's job description for an "Accountant 3" constitutes a "policy" or "rule" that F & A did not have discretion to disregard. We review the governing statutes and regulations to determine whether Mr. Randle's argument is correct.

The UAPA defines "rule" to mean, in pertinent part:

each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency. "Rule" includes the amendment or repeal of a prior rule, but does not include:

(A) Statements concerning only the internal management of state government

and not affecting private rights, privileges or procedures available to the public.

Tenn. Code Ann. § 4-5-102(12). The UAPA defines “policy” as “a set of decisions, procedures and practices pertaining to the internal operation or actions of an agency.” Tenn. Code Ann. § 4-5-102(10).

The DHR’s job description is not an agency statement of general applicability. It is a statement concerning the internal management of state government that is specifically excluded from the definition of “rule.” Moreover, the job description does not constitute a policy, as the description is not a set of decisions, procedures, or practices regarding the internal operation or actions of an agency.

The commissioner is directed by the General Assembly to “ascertain duties, authority and responsibilities of all positions in the career service” and to prepare a classification plan based on the duties and responsibilities of the positions. Tenn. Code Ann. § 8-30-209(a). As the State points out, nothing in the civil service statutes or regulations mandates that an employee perform all the work activities listed in a job description. After reviewing the relevant statutes and regulations, we conclude DHR’s job description for an Accountant 3 does not rise to the level of a rule or policy, as Mr. Randle suggests.

We next turn to the list of grievable and non-grievable matters set forth in DHR’s regulations. DHR is directed by statute to “promulgate regulations establishing a grievance procedure for regular employees.” Tenn. Code Ann. § 8-30-328(a)(1). A review of the list of grievable matters indicates that not being assigned supervisory responsibilities or more complicated tasks is not covered by any of the matters described as being grievable. The final grievable matter set forth in subsection (9) includes “other matters determined at the sole discretion of the appointing authority to be grievable, but not included in section 1120-11-.07 below.”

Mr. Randle contends his grievance should be covered by subsection (9) of the list of grievable matters. Mr. Randle asserts the administrative law judge and the trial court erred in determining that the level of difficulty of the work Mr. Randle is assigned, and whether he is assigned supervisory responsibilities, constitutes a discretionary management decision by the DHR, which is expressly excepted as non-grievable by § 1120-11-.07(16) of DHR’s regulations. We find Mr. Randle’s argument unpersuasive and find instead that Mr. Randle’s grievance is covered by subsection (16) and that it is, therefore, non-grievable. An individual, or group of individuals, who assign/s work to employees must have discretion to decide what work is performed by which employee/s. Thus, we agree with the trial court’s statement that “This common-sense reading of the rule applied to real-life work setting . . .



is necessary for management to have discretion in distributing work assignments.”

Mr. Randle asserts his due process rights have been violated, but he fails to make any argument or cite any authority in support of this assertion. “Our courts have routinely held that the failure to . . . cite relevant authority in the argument section of the brief as described by Rule 27(a)(7) constitutes a waiver of the issue[s] raised.” *Chiozza v. Chiozza*, 315 S.W.3d 482, 489 (Tenn. Ct. App. 2009) (quoting *Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000)). We, therefore, will not address this issue.<sup>2</sup>

Because Mr. Randle’s complaint is a “non-grievable matter” pursuant to the applicable DHR Regulations, we hold the Civil Service Commission did not have subject matter jurisdiction to consider Mr. Randle’s complaint. *See Webb v. Tennessee Dep’t of Tourist Dev.*, 2006 WL 2334852, at \*4 (Tenn. Ct. App. Aug. 10, 2006) (career employee asserting non-grievable matter is not entitled to five-step grievance process culminating in contested case hearing before Civil Service Commission). Accordingly, we affirm the trial court’s judgment dismissing Mr. Randle’s petition.

### III. CONCLUSION

The trial court’s judgment dismissing Mr. Randle’s petition is affirmed. Costs of the appeal shall be taxed to the appellant, Torrance Randle, for which execution shall issue, if necessary.

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PATRICIA J. COTTRELL, JUDGE

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<sup>2</sup>The trial court stated in its Memorandum and Order that Mr. Randle’s due process rights argument has no merit. It noted that Mr. Randle’s position as an Accountant 3 has not been threatened and that Mr. Randle receives a salary in line with others employed as an Accountant 3.