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RE: In the Matter of: Sean Emmer and Adam Cooley Docket No. 56.00-119030J

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

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

**BEFORE THE ADMINISTRATIVE LAW JUDGE
ON BEHALF OF THE CITY COUNCIL OF THE CITY OF CHATTANOOGA**

IN THE MATTER OF:

SEAN EMMER AND ADAM COOLEY

DOCKET NO. 56.00-119030J

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 BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **October 9, 2013**.

YOU MUST FILE THE APPEAL, 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
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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 A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE ADMINISTRATIVE LAW JUDGE
ON BEHALF OF THE CITY COUNCIL OF THE CITY OF CHATTANOOGA**

IN THE MATTER OF:

**CITY OF CHATTANOOGA and
CHATTANOOGA POLICE DEPARTMENT,
*Petitioner,***

vs.

**SEAN EMMER and ADAM COOLEY,
*Grievants.***

DOCKET NO: 56.00-119030J

INITIAL ORDER

This contested case was heard on June 26, June 27 and July 3, 2013, in Chattanooga, Tennessee, before Administrative Judge Kim Summers, assigned by the Tennessee Secretary of State, Administrative Procedures Division to preside in this matter on behalf of the City Council of the City of Chattanooga. Mr. Phillip Noblett, Deputy City Attorney, and Mr. Keith Reisman, Assistant City Attorney, represented the City of Chattanooga and the Chattanooga Police Department (hereinafter referred to as "Chattanooga"). Grievant Officer Sean Emmer was present and was represented by attorneys Bryan Hoss and Stevie Phillips. Grievant Officer Adam Cooley was present and was represented by attorney Jonathon Guthrie. The purpose of the hearing was to determine the propriety of the Grievants' termination from the Chattanooga Police Department.

After consideration of the testimony and evidence presented, the arguments of counsel, and the entire record in this matter, it is determined that Chattanooga did not show by a preponderance of the evidence that termination of the Grievants was appropriate. Accordingly, the Grievants are hereby reinstated to their positions with the Chattanooga Police Department.

This decision is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

The following witnesses were called to testify on behalf of Chattanooga – Alex Mercado, Internal Affairs Investigator; Captain Susan Blaine, retired; Chief of Police Bobby Dodd; Mark Wills, Staff Instructor with the POST Training Academy; and Deputy Chief of Police Mike Williams, retired. The testimony on behalf of Chattanooga included the following –

- A neck restraint can be deadly force; a choke hold would have been appropriate if, at the time, Officer Emmer was aware that Mr. Tatum had a knife; and it would not have been appropriate for Officer Emmer to use a choke hold to take Mr. Tatum to the floor.
- The initial use of the taser and baton were appropriate; and there was no need for additional baton strikes when Mr. Tatum's resistance becomes passive.
- The strikes to Mr. Tatum's face by Officer Cooley did not appear to be appropriate, especially since other officers were arriving on the scene; punches are generally used for defense; punching a suspect in the head while on a hard surface can be lethal; and active resistance would permit baton strikes to the body but not hard hand strikes to the head.
- The punches and baton strikes were excessive and not necessary to make an arrest.
- The officers could have used a brachial stun which is an open palm strike to the side of the neck; the Officers should have used their size and strength to get Mr. Tatum under control; Officer Emmer had the alternative of getting a cuff on at least one arm and then using force to get the cuff on the other arm even if Mr. Tatum's wrist was broken in the process; and the Officers should have gone "hands on" when the baton strikes were not successful.
- The length of the fight could justify a reasonable increase in force.
- If Officer Emmer was concerned about Mr. Tatum spitting, he could have moved away rather than knocking Mr. Tatum over; an officer should not kick a suspect in restraints; when

outside, Officer Emmer was standing too close to Mr. Tatum; and Officer Emmer should have discussed with Mr. Tatum that spitting blood would cause a contamination problem.

- The video of the incident would be very public, and the Chief would have to explain if he chose not to terminate Officers Emmer and Cooley.

- A fact-finding investigation against Officers Emmer and Smith was requested after receipt of a non-specific inquiry about the incident from Mr. Tatum's attorney.

- A report from the Tennessee Law Enforcement Training Academy found that the actions of the Officers were out of policy and excessive.

- The testimony provided by the Officers during their pre-termination hearing was not consistent with the information provided in their incident reports; and the Officers were terminated, rather than suspended, in part, because of the belief that they were not truthful in their pre-termination hearings.

- It was concluded that the conduct of Officers Emmer and Cooley could not be fixed with additional training.

The following witnesses were called to testify on behalf of the Grievants – Officer Sean Emmer; Officer Adam Cooley; Officer Chip Smith; Sergeant Darryl Turner; Sergeant Michael Wenger; former Officer LaToya Tate, Master Patrol Officer Phillip McClain¹, Use of Force Instructor; Deputy Chief of Police T.E. Vaughn, retired; and Audra Wilson, Salvation Army Housing Monitor. The testimony on behalf of the Officers included the following –

- Kicking and trying to stand are considered defensive resistance, which would justify baton strikes; baton strikes were within policy; and defensive resistance can become aggressive and dangerous very quickly.

- Even with a baton, shins are in the “green” (acceptable) zone.

¹ Officer McClain was called to testify by the Grievants but also provided testimony in support of the termination.

- The presence of the other residents posed an additional threat.

- Cuffing would not have gone well when Mr. Tatum was jerking away when Officer Emmer got his handcuffs out; a suspect should be under control before cuffing; and getting a suspect rolled over on his belly is the preferred position for an arrest.

- Punches to the face are not preferred, but policy does not prohibit punches to the face or make punches deadly force; punches to the face require justification; face punches are common practice, even in non-deadly force situations; policy allows for limited use of a weapon on a suspect's head / neck; and hard-empty hand includes punches.

- The line between enough force and too much force is not clear; use of force policy is affected by use of drugs by a suspect; and a lot of deference must be given to the decisions made by the officers on the scene.

- If there is knowledge of a knife, deadly force is warranted; and if deadly force is warranted, the means employed do not matter.

- Suspects suffer the same energy depletion that is experienced by officers in a fight / struggle.

- Out in the lobby, the other residents could be heard beating on the other side of the door; and the door had to be guarded in order to make the arrest of Mr. Tatum.

- Once outside, it did appear that Mr. Tatum was attempting to spit.

- Officers are not trained on a maximum number of baton strikes but that efforts should continue until compliance; the Officers were not aware of the number of strikes without the benefit of the video; and the Officers were not given an opportunity to view the video before the disciplinary hearings;

- Officers Emmer and Cooley were considered to be good and trusted Officers.

- The incident reports submitted by Officers and Emmer and Cooley did not appear to be dishonest.

- Having other possible alternatives does not equate to a policy violation for the method chosen; a technique may be used if not specifically prohibited; and, at most, this would be a training issue.

The following fifty-nine exhibits were entered into evidence – EXHIBIT 1, August 27, 2012 Internal Affairs Investigative Report submitted by Investigator Mercado; EXHIBIT 2, CD with 911 Call from June 14, 2012; EXHIBIT 3, DVD of June 14, 2012 incident at the Salvation Army submitted by Chattanooga; EXHIBIT 4, Officer Emmer's June 14, 2012 Incident Report; EXHIBIT 5, Officer Cooley's June 14, 2012 Incident Report; EXHIBIT 6, ADM-5 – Use of Force Policy of the Chattanooga Police Department; EXHIBIT 7, September 4, 2012 Internal Affairs Commander's Recommendation submitted by Captain Susan Blaine; EXHIBIT 8, June 28, 2011 Internal Affairs Commander's Recommendation submitted by Captain Susan Blaine; EXHIBIT 9, Review of Use of Force Incident prepared by Mark Wills with the Tennessee Law Enforcement Training Academy; EXHIBIT 10, Pictures of Adam Tatum; EXHIBIT 11, Emails from the morning of June 14, 2012; EXHIBIT 12, Emails from the afternoon of June 14, 2012; EXHIBIT 13, September 19, 2012 letter to Officer Emmer regarding Disciplinary Hearing; EXHIBIT 14, October 2, 2012 letter to Officer Emmer regarding Disciplinary Hearing; EXHIBIT 15, October 11, 2012 letter to Officer Emmer regarding Disciplinary Hearing; EXHIBIT 16, October 15, 2012 letter from Bryan Hoss to Chief Dodd; EXHIBIT 17, October 16, 2012 letter from Chief Dodd to Bryan Hoss; EXHIBIT 18, November 7, 2012 letter to Officer Emmer regarding termination; EXHIBIT 19, PPCT Defensive Tactics Student Manual; EXHIBIT 20, April 17, 2012 Employee Performance Review for Officer Cooley; EXHIBIT 21, April 28, 2011 Employee Performance Review for Officer Cooley; EXHIBIT 22, April 27, 2010 Employee Performance Review for

Officer Cooley; EXHIBIT 23, CD of audio and video from Officer Cooley's police vehicle from June 14, 2012; EXHIBIT 24, September 19, 2012 letter to Officer Cooley regarding Disciplinary Hearing; EXHIBIT 25, October 2, 2012 letter to Officer Cooley regarding Disciplinary Hearing; EXHIBIT 26, October 11, 2012 letter to Officer Cooley regarding Disciplinary Hearing; EXHIBIT 27, Transcript from November 7, 2012 disciplinary hearing for Officer Cooley; EXHIBIT 28, Two CDs of November 7, 2012 Disciplinary Hearing for Officer Emmer; EXHIBIT 29, Four CDs of November 7, 2012 Disciplinary Hearing for Officer Cooley; EXHIBIT 30, Response from Chattanooga to Requests for Admissions; EXHIBIT 31, Email from June 25, 2012; EXHIBIT 32, Internet link for news story in the Chattanooga Times Free Press; EXHIBIT 33, Expert Witness Report submitted by Mike Williams; EXHIBIT 34, Officer Smith's June 14, 2012 Incident Report; EXHIBIT 35, Body Diagram specifying Green, Yellow, and Red Target Areas; EXHIBIT 36, No True Bill against Officer Emmer for Aggravated Assault; EXHIBIT 37, Officer Emmer's OC Spray Training Video; EXHIBIT 38, Officer Emmer's Taser Training Video; EXHIBIT 39, Letter to Officer Emmer from the Civil Rights Division of the U.S. Department of Justice; EXHIBIT 40, CD of audio and video from Officer Cooley's police vehicle from June 14, 2012; EXHIBIT 41, No True Bill against Officer Cooley for Assault; EXHIBIT 42, Letter to Officer Cooley from the Civil Rights Division of the U.S. Department of Justice; EXHIBIT 43, DVD of June 14, 2012 Incident with synced audio and video; EXHIBIT 44, Chattanooga Police Department Academy Curriculum; EXHIBIT 45, DT Basic Exam B for Cadet Cooley; EXHIBIT 46, April 28, 2011 Employee Performance Review for Officer Emmer; EXHIBIT 47, April 17, 2012 Employee Performance Review for Officer Emmer; EXHIBIT 48, PER-6 – Disciplinary Procedures from the Chattanooga Police Department Policy Manual; EXHIBIT 49, June 28, 2012 Affidavit of Complaint against Adam Tatum for Aggravated Assault; EXHIBIT 50, Documents pertaining to the Internal Affairs Investigation of Sergeant Wenger pertaining to his investigation of June 14,

2012 incident ; EXHIBIT 51, July 22, 2012 Supplemental Report from Sergeant Wenger; EXHIBIT 52, August 6, 2012 Email from Investigator Mercado; EXHIBIT 53, Officer Cooley's OC Spray Training Video; EXHIBIT 54, PPCT Defensive Tactics Student Manual – Chapter 1 (for identification only); EXHIBIT 55, Use of Force Training Video; EXHIBIT 56, DVD of June 14, 2012 Incident – knife angle; EXHIBIT 57, Report and Conclusion on Officer Use of Force / Injury for Officer Emmer submitted by T.E. Vaughn; EXHIBIT 58, Report and Conclusion on Officer Use of Force / Injury for Officer Cooley submitted by T.E. Vaughn; and EXHIBIT 59, Documents pertaining to Disciplinary action against Sean Morris (for identification only).

FINDINGS OF FACT

1. Sean Emmer was hired as a police officer by the Chattanooga Police Department in 2008. Prior to his termination in November 2012, Officer Emmer had not been subject to any other disciplinary action.
2. Adam Cooley was hired as a police officer by the Chattanooga Police Department in 2007. Prior to his termination in November 2012, Officer Cooley had not been subject to any other disciplinary action.
3. In the early morning hours of June 14, 2012, Adam Tatum returned to the Salvation Army halfway house in Chattanooga, Tennessee, where he was staying following his release from federal prison.
4. Mr. Tatum's behavior and demeanor suggested possible drug use to Audra Wilson, a staff person at the halfway house. Ms. Wilson asked Mr. Tatum to take a drug test. At first, Mr. Tatum consented and then refused, becoming hostile and belligerent.
5. Mr. Tatum encountered another resident of the halfway house in the hallway of the secure area of the facility after passing through a locked door in the lobby area. A verbal altercation ensued during which Mr. Tatum pulled a knife on the other resident while holding

him by the front of his shirt. Mr. Tatum was also kicking violently on the door to the control room where Audra Wilson and her co-worker, Clayton Payne, had retreated for security.

6. Mr. Tatum's actions damaged the bolts on the control room door that held the window pane in place.

7. When the altercation continued for several minutes, Ms. Wilson became concerned about the safety of the individuals in the facility and called 911 from the control room. The call mentioned a violent offender at the Salvation Army halfway house. In her eight years of employment at the Salvation Army facility, Ms. Wilson had never before felt the need to call 911.

8. Several patrol officers from the Chattanooga Police Department responded to the request for assistance and left the scene after checking the exterior perimeter of the facility. Officers Sean Emmer and Chip (James) Smith remained and went inside the facility.

9. The Officers were not provided details by the dispatcher but believed the situation to be serious based on what they were told. The Officers thought that someone was trying to break into the room where the 911 caller was located and could hear someone beating on a door immediately upon entering the lobby of the facility. The Officers did not discuss the situation with either Ms. Wilson or Mr. Payne but it was clear that they were in distress. The Officers were admitted into the secure area of the facility where they encountered Mr. Tatum still in the hallway, holding the shirt of the other resident.

10. Loud banging was captured by Officer Emmer's police vehicle as soon as he entered the facility.

11. The Officers determined Mr. Tatum to be the aggressor and tried to engage him in conversation. Mr. Tatum pulled the other resident away from the Officers by the shirt and

attempted to enter another room behind a closed door. He was instructed by Officer Emmer to remain in the hallway because the other room contained weights that could be used as weapons.

12. Mr. Tatum entered the other room but came back to the hallway when he was told to do so. When he began swearing at the Officers and suggesting that they arrest him, the Officers instructed Mr. Tatum to turn around and place his hands behind his back. He did not comply. Officer Emmer then placed his arm around Mr. Tatum to keep him from reentering the weight room. Upon noticing the knife that was in Mr. Tatum's right hand, Officer Emmer placed Mr. Tatum in a neck restraint and wrestled him to the ground. In the midst of the scuffle, the knife that Mr. Tatum had been holding was knocked out of his hand and fell to the floor.

13. While on the floor with Mr. Tatum, Officer Emmer attempted to secure the knife, which was, ultimately, carried off by another resident of the facility.

14. Police officers are taught that, when a deadly weapon has been found on a suspect, a second deadly weapon should be anticipated.

15. When he was on the floor, Officers Emmer and Smith, at a combined weight of approximately 500 pounds, again, attempted to bring Mr. Tatum under control so that he could be handcuffed and taken into custody. Mr. Tatum, weighing less than 200 pounds, managed to escape the hold of both Officers even after being tased by Officer Smith. Mr. Tatum just stood up and pulled out the taser barbs. After being touch tased by Officer Smith near his left shoulder, Mr. Tatum opened the door and ran into the lobby.

16. The Officers were surprised by Mr. Tatum's response to the tasing. It is unusual and unexpected for an individual not to suffer some measure of debilitation from being tased and to be able to remove the barbs from his body while they are still actively charged.

17. Mr. Tatum first said "you broke me" after the first tasing.

18. By policy, officers should make an attempt to cuff immediately after using a taser or OC spray.

19. The Officers ran into the lobby and chased Mr. Tatum down a narrow hallway where Officer Smith used his OC Spray in order to gain compliance. The OC spray had no apparent effect on Mr. Tatum. The Officers deployed their batons and repeatedly ordered Mr. Tatum to roll over onto his stomach. He did not comply.

20. It is unusual and unexpected for an individual not to suffer negative effects from OC spray.

21. In order to get away from the OC spray, which was affecting the Officers, and have some additional room to maneuver, the Officers grabbed Mr. Tatum by the leg and dragged him from the hallway into the main part of the lobby. Mr. Tatum resisted and kicked several times at the Officers. For several more minutes, the Officers made additional baton strikes on various parts of Mr. Tatum's body while ordering him to roll over. Mr. Tatum was guarding his shins and said a few times that his leg had been broken. He begged the Officers to stop the baton strikes but continued to resist and made several efforts to stand.

22. During a moment when Mr. Tatum appeared to be less combative, Officer Emmer tried to get Mr. Tatum handcuffed. Mr. Tatum pulled his arm away and said "Don't do me like that, man." The effort was still unsuccessful.

23. Officer Emmer did not think he could get Mr. Tatum cuffed while he was standing and Mr. Tatum was on the ground.

24. Mr. Tatum was struck by the baton approximately forty times. The majority of the baton strikes were done by Officer Emmer to Mr. Tatum's legs.

25. Officer Smith became preoccupied with guarding the door due to the residents gathering on the other side.

26. The Officers were exhausted and short of breath from the OC spray lingering in the air as well as the unsuccessful efforts to bring Mr. Tatum into compliance. The Officers also had a growing concern about noises from the other residents coming from behind the locked door. At this time, Officer Emmer used the police radio attached to his uniform to communicate these concerns to dispatch and to request assistance.

27. Over the radio, a winded Officer Emmer called in a 4-12, officer in a fight, and can be heard saying, "They're trying to come in on us." In response, Dispatch directs other officers to "clear the air" and for "all units to step up."

28. Officers Emmer and Smith spent approximately 4.5 minutes attempting to bring Mr. Tatum into compliance while requesting assistance from other officers for a 4-12.

29. Officer Adam Cooley was several miles away responding to another incident when he heard the request for assistance over his police radio. Because he believed Officers Emmer and Smith to be in trouble and in need of emergency assistance, Officer Cooley drove up to eighty miles per hour across the streets of downtown Chattanooga to the Salvation Army location which he knew to be a halfway house for individuals released from federal prison.

30. Officer Cooley was required to take as true the expressions of danger from his police radio.

31. Upon arrival, Officer Cooley ran into the building where he smelled OC spray in the air and saw blood on the floor, as well as two large, worn-out and winded police officers. He was directed by Officer Emmer to use his taser. His first effort was not successful because only one barb made contact with Mr. Tatum's body but then Officer Cooley did accomplish a touch tase, which still did not succeed in bringing Mr. Tatum into compliance as he continued to disregard directives from the Officers to roll over.

32. As other officers arrived on the scene, they were instructed to guard the door leading to the secure area of the facility to prevent other residents of the halfway house from entering the lobby. There were twelve to fifteen other residents gathering in the hallway on the other side of the door, causing a loud commotion.
33. Many, if not all, of the officers were affected in some way by the OC spray which still lingered in the air.
34. The presence of the OC spray and the other residents elevated the danger of the situation and the need for split-second decisions.
35. With a sense of urgency, Officer Cooley continued his efforts to roll Mr. Tatum onto his stomach. Standing astride Mr. Tatum with one leg on either side of his body, Officer Cooley first tried to use Mr. Tatum's arms to roll him over, warning Mr. Tatum that he would strike him in the face if he did not comply. Officer Cooley then struck Mr. Tatum several times, in the face and elsewhere, and then, again, tried to roll him over, which Mr. Tatum continued to resist. Officer Cooley repeated this process until, finally, Mr. Tatum was on his stomach. Even then, Mr. Tatum continued to pull his arms away and otherwise resist the efforts to place him in handcuffs. Five officers were ultimately required to get Mr. Tatum under control and handcuffed. Because of his continued resistance, two sets of handcuffs were needed.
36. Mr. Tatum was in handcuffs 2.5 minutes after the arrival of Officer Cooley.
37. A suspect remains a threat until in custody / handcuffs.
38. Mr. Tatum's resistance to being rolled over justified a judicious increase in force.
39. Mr. Tatum disregarded approximately seventy verbal commands for him to roll over so that he could be handcuffed.
40. Officers Emmer and Cooley experienced tunnel vision and were not aware of all that was going on around them while trying to get Mr. Tatum in handcuffs.

41. When responding to the call for assistance at the Salvation Army facility, Officers Emmer and Cooley had no idea what situation they would encounter.

42. Mr. Tatum was escorted outside by an officer and directed to sit on a short retaining wall to the side of the walkway. From this position, Mr. Tatum still had the ability to stand. When he appeared to be trying to do so, Officer Emmer used his foot to push him back down on the ground. Officer Emmer was also concerned that Mr. Tatum was attempting to spit blood.

43. Mr. Tatum was bleeding but did not appear to be in pain. Eventually, he was taken to the hospital by ambulance where he tested positive for cocaine and was diagnosed with a broken leg. There was no recorded injury to Mr. Tatum's neck. He remained combative for several more hours and had to be handcuffed to the bed.

44. Marijuana was found in Mr. Tatum's shoe.

45. Cocaine is known to increase the strength of the user and to desensitize the individual to pain.

46. Officers are trained to use reasonable force under the circumstances, and officer exhaustion can justify escalation of force.

47. Officers have been trained not to back off from a struggle until a suspect is cuffed. It is unusual for a suspect to resist all trained techniques for bringing someone into compliance.

48. A video of the incident was captured on the cameras installed throughout the Salvation Army Facility. The audio was recorded in Officer Emmer's car through his police radio.

49. As required, Officers Emmer and Cooley each turned in a report of the incident by the end of their shift on June 14, 2012, without the benefit of either rest or the video. The incident reports were not precisely consistent with the facts learned following review of the

video and the recording from Officer Emmer's police vehicle – both reports under-stated the number of strikes to Mr. Tatum, and Officer Emmer's statement about the initial appearance of the knife was not consistent with his subsequent recollection.

50. When an individual is suffering from Critical Incident Amnesia, they will initially only remember general information about the incident. Full recall will occur only after two full sleep cycles.

51. Recall immediately following a traumatic incident is often not the most reliable. The extent to which memory is impaired is generally determined by the amount of stress felt during the incident.

52. Several days after the incident, a criminal investigation was commenced by Major Wenger of the Department's Major Crimes division to determine any criminal wrong-doing by either the Officers or Mr. Tatum.

53. In his statement to Investigator Wenger, Clayton Payne quoted Mr. Tatum as having said during the incident, "Ya'll already broke me up and I am not giving up."

54. In her statement to Investigator Wenger, Audra Wilson stated that Mr. Tatum "was pretty wild" and that the Officers handled the situation very well.

55. In his statement to Investigator Wenger, Officer Daryl Slaughter stated that he saw Officer Emmer push Mr. Tatum back down with his foot and that, on account of all the blood, he would have done the same if he had seen Mr. Tatum trying to stand.

56. In his statement to Investigator Wenger, Officer Emmer stated that Mr. Tatum was one of the strongest people he had ever encountered and that there was no way he and Officer Smith would have gotten him into custody without assistance. He also stated that he used baton strikes in lieu of going hands on since he was not sure whether or not Mr. Tatum had another weapon.

57. The investigation determined that Mr. Tatum refused verbal commands by the Officers and resisted arrest. Mr. Tatum admitted to resisting arrest. He was charged with three counts of aggravated assault, including one count for assaulting the other resident with a knife; resisting arrest; and possession of marijuana. He ultimately received a sentence of 11 months, 29 days.

58. The Major Crimes investigation found no criminal wrong-doing by Officers Emmer and Cooley; however, Sergeant Wenger was instructed to present the case against the Officers to the Grand Jury, which returned a No True Bill. The Officers were also cleared of any criminal wrong-doing by the Federal Bureau of Investigation.

59. The incident was investigated in late July by Alex Mercado with the Police Department's Internal Affairs (IA). The IA investigation largely relied on the interviews conducted by Major Crimes. Investigator Mercado interviewed Officers Emmer and Smith but did not interview Officer Cooley. During the investigation, Mr. Tatum admitted to spitting blood on the ground and trying to stand but denied that he ever had a knife. Ultimately, Officer Mercado concluded that Officers Emmer and Cooley followed the Department's use of force policy as much as possible.

60. Officer Cooley was not aware of the IA investigation while it was in process but, ultimately, believed that the report had cleared him of any wrong-doing.

61. The IA report compiled by Investigator Mercado was reviewed by the IA Commander, Captain Susan Blaine, who made a finding of excessive force and made a recommendation on appropriate discipline to Assistant Chief of Police Randy Dunn. The findings and recommendation were reviewed and sanctioned by the Department's Administrative Review Committee and, ultimately, Chief Dodd.

62. The recommendation for disciplinary action was based upon a finding that Officers Emmer and Cooley used more force than was necessary to arrest Mr. Tatum because the Officers had the option to wait for back up because Mr. Tatum engaged only in passive resistance, not active resistance.

63. Captain Blaine recommended that Officers Emmer and Cooley be suspended and receive additional training in the use of force.

64. The video of the incident was immediately available for review but the final report on the incident was not completed for several months. The report was provided to Chief Dodd on September 4, 2012. In the interim, neither Officer experienced any change in the conditions of employment or was aware that his job was in jeopardy. Officer Cooley continued to be a field training officer responsible for training new officers.

65. An Internal Affairs Complaint was received from Mr. Tatum in September 2012. A lawsuit has also been initiated against Chattanooga by Mr. Tatum.

66. Officers receive training in the appropriate use of force in the police academy and, thereafter, during daily roll call and in the yearly in-service training.

67. The letters given to Officers Emmer and Cooley advising them of the pending proceedings specified that they were in jeopardy of discipline, up to and including suspension without pay. The letters also referenced the Internal Affairs Report for the specific facts underlying the charges. The Internal Affairs Report was the only document provided to the Officers prior to their disciplinary hearings.

68. Sergeant Darryl Turner was the direct supervisor for both Officers Emmer and Cooley.

69. Sergeant Turner gave Officer Emmer satisfactory scores on his performance review for the period of April 1, 2010 through March 31, 2011, as well as the two prior performance reviews.

70. Sergeant Turner gave Officer Cooley satisfactory scores on his performance review for the period of April 1, 2010 through March 31, 2011, as well as the two prior performance reviews. It was also noted in Officer Cooley's April 2012 performance evaluation that he was an "outstanding officer with a bright future."

71. The only alternative score to "satisfactory" that can be received on the performance review is "needs improvement."

72. It would have been customary for Sergeant Turner to make a recommendation up the chain of command on appropriate disciplinary action for Officers Emmer and Cooley or at least to be involved in the decision. However, he was not consulted or allowed to participate.

73. Sergeant Turner would willingly work with Officers Emmer and Cooley again if they were reinstated.

74. The ultimate decision on any violation and the appropriate discipline was made by Chief Dodd.

75. Officer Smith was not disciplined for his role in the June 14, 2012 incident.

76. Other residents of the Salvation Army facility were charged with tampering with evidence for taking the knife used by Mr. Tatum.

77. The actions of Officers Emmer and Cooley were not malicious or intentionally in violation of policy.

78. No other officer involved in the incident found there to be an excessive use of force.

79. Another police officer with the Chattanooga Police Department was charged and received judicial diversion for striking a juvenile suspect after he had been hand-cuffed. The police officer is still with the Department.

80. Officers Emmer and Cooley were terminated from the Chattanooga Police Department on November 7, 2012, following a disciplinary hearing.

81. During his disciplinary hearing, Officer Cooley stated that he landed punches wherever he could on Mr. Tatum, which did include some punches to his head.

82. Officers Emmer and Cooley timely appealed the termination.

RELEVANT LAW

1. CHATTANOOGA CITY CODE § 2-174 provides, in pertinent part:

(a) No City employee shall be demoted, suspended or dismissed for...any...unjust or arbitrary cause.[...]

(b) Disciplinary action up to and including dismissal may be taken for any *just cause* including, but not limited to, the following:

(5) Violation of department or city ordinance(s), rule(s), regulations(s) or law(s) or violation of any applicable state law, rule or regulation subject to the provisions of this Code.

(6) Conduct unbecoming a public employee.

2. The legal standard which constitutes “just cause” to terminate a civil (classified) service employee is concisely stated in 67 C.J.S., *Officers and Public Employees*, § 137, cited by the Court in *Knoxville Utilities Board v. Knoxville Civil Service Merit Board*, 1993 WL 229505, at *10 (Tenn. Ct. App. 1993). “Just cause” is defined as follows:

“Just cause” is a ground for removal. In this respect, “just cause” implies a cause sufficient in law, and is any cause which is detrimental to public service. It may be established by a showing of conduct indicating that the employee lacks the competency and ability to perform the duties of his office.

Just cause requires grounds for the disciplinary action which are fair and reasonable.

3. The “standard” for discipline in this case is set forth in RESOLUTION NO. 26612 OF THE CITY COUNCIL OF THE CITY OF CHATTANOOGA § 12 which provides that there must be “reasonable basis” for the employment decision.

4. In *City of Memphis v. Catron*, 2011 WL 1902167 (Tenn. Ct. App. 2011), the Memphis Civil Service Commission found that a decision to terminate a city employee was not reasonable because, among other things, the discipline was more harsh than other discipline imposed for similar conduct. The Court of Appeals upheld the Commission’s decision finding that it was neither arbitrary nor capricious. *See also, Gross v. Gillless*, 26 S.W. 3d 488, 492 (Tenn. Ct. App. 1999) (indicating that appropriate discipline should consider the discipline imposed on other employees who have engaged in the same or similar conduct).

5. The Use of Force Policy of the Chattanooga Police Department (ADM-5) provides the following guidance regarding the use of force –

II. Use of Force

A. Office of the Chattanooga Police Department shall use only the minimum level of force necessary to conduct lawful public safety activities and accomplish the mission of the department. The level of force used by a police officer in any given situation is dependent on the level of resistance presented by the person with whom the officer is dealing.

D. Use of Force Continuum –

1. Whenever possible, police officers shall employ a progression of force commonly referred to as the “use of force continuum.” The continuum is based on the concept of increasing the police officer’s level of control in response to the level of resistance of the suspect or violator. If a suspect or violator increases his level of resistance or threat to the officer, the officer is justified in increasing his level of control. As the suspect’s resistance decreases, the officer’s use of force shall decrease proportionally until the suspect is safely secured, usually by handcuffing.
3. Officers may be required and may be fully justified in using force that falls at any point on the continuum based on the circumstances. Allowances must be made for the fact that officers are often forced to make split-second decisions about the amount of force that is necessary in a particular situation or circumstances that are tense, uncertain and rapidly evolving.

<u>4. Individual's Actions</u>	<u>Officer's Responses</u>
Psychological Intimidation	Officer Presence
Verbal Non-Compliance	Verbal Direction *
Passive Resistance	Soft Empty Hand Control*
Active Resistance	Hard Empty Hand Control* Intermediate Weapons * (includes canines)
Aggravated Active Resistance	Deadly Force *OC Spray / Electronic Weapon

6. Oleoresim Capsicum (OC) spray or the electronic weapon may be utilized at the officer's discretion as a temporary incapacitator at any point on the use of force continuum after verbal intervention if the officer feels that a physical confrontation is unavoidable; depending on the circumstances, verbal intervention may not always be possible or practical prior to use of OC and/or electronic weapon.

7. This policy will recognize that there may be occasions when an officer must choose to jump levels of the continuum due to a suspect's actions. Factors that may lead to such a decision will include, but are not limited to the officer's and the suspect's relative age, sex, size, skill level and strength. Other factors which may be considered in a deviation from the use of force continuum may include the officer's and the suspect's proximity to weapons, the officer's and the suspect's relative physical states including any injuries or degree of exhaustion, as well as the officer's distance from the subject and the officer's special knowledge of the subject. The officer must be able to articulate why the deviation from the use of force continuum was necessary when reporting the use of force.

6. The PPCT Defensive Tactics Student Manual provides the following information about Critical Incident Amnesia –

This temporary amnesia will affect both the officer's memory and the officer's ability to write an incident report.

Because this form of amnesia is temporary, considerations should be made as to the time table necessary to recover the memory, including the effects that sleep has on this process. Before the first sleep period, a person will only be able to recall general characteristics of the incident. After the first sleep period, a person's ability to remember will increase by 50% to 90%. A person's ability to completely remember will not occur until after the second sleep period.

7. The PPCT Defensive Tactics Student Manual provides the following information about tunnel vision caused by combat-induced stress –

During this phenomenon, your vision literally narrows down as though you were looking through a tube with reduction of up to 70% in the peripheral field. The inherent problem is the mind is processing only minimal information and may cause critical information, such as threat cues, to be missed.

8. PER-6 – Disciplinary Procedures – from the Policy Manual of the Chattanooga Police Department specifies the following –

I. A. 1. Supervisory action in disciplinary matters involves both discretion and fairness on the part of those supervisors administering the action. Naturally, the punishment for repeated violations by employees will be greater than on prior offenses, and the intent of the department is to first retrain the employee in an effort to salvage a valuable asset.

II. K. 1. The role of a supervisor, especially the first-line supervisor, is crucial in the disciplinary process. First-line supervisors have the best opportunity to observe the conduct and appearance of officers, and detect those instances when disciplinary actions are warranted (remedial training, counseling or punishment). First-line supervisors also have the opportunity to understand the personality traits of the personnel under their supervision, and to determine the most effective methods of discipline.

ANALYSIS AND CONCLUSIONS OF LAW

1. Chattanooga bears the burden of proof in this matter to show that the Grievants have violated Chattanooga's written rules, policies or procedures, and that the discipline imposed was the appropriate discipline for any violation of such rules.
2. Chattanooga contends that the neck restraint employed by Officer Emmer was excessive and unjustified. This contention is found to be without merit.
3. Mr. Tatum was armed with a knife when the Officers entered the building and when he was placed in a neck restraint by Officer Emmer. The restraint was not an effort to render Mr. Tatum unconscious but only to get him on the floor and under control.
4. No one disputes that the presence of a knife justifies the use of deadly force. Chattanooga does contend, however, that the use of deadly force by Officer Emmer was not justified because Officer Emmer's statements about when he first saw the knife were not

consistent, and it is not clear if Officer Emmer saw the knife in Mr. Tatum's hand before employing the neck restraint.

5. The failure of immediate recall following a critical incident is clearly documented in the PPCT Defensive Tactics Student Manual used by Chattanooga to train its police officers.

6. In all statements since submission of his incident report on June 14, 2012, Officer Emmer has consistently recalled seeing the knife in Mr. Tatum's hand before tightening the neck restraint and taking Mr. Tatum to the floor.

7. Chattanooga has failed to prove by a preponderance of the evidence that the neck restraint employed by Officer Emmer was excessive, inappropriate, or unjustified.

8. Chattanooga contends that the number of strikes with Officer Emmer's baton were excessive and unjustified. This contention is found to be without merit.

9. All force used by Officers Emmer and Smith was for the purpose of bringing Mr. Tatum under control and into compliance in order to make an arrest as quickly as possible, which was consistent with police department policy.

10. Officers Emmer and Smith employed the baton strikes on Mr. Tatum only after he failed to submit to handcuffing, was found to be in possession of a deadly weapon, and had demonstrated resistance to both the taser and pepper spray. At this point, the baton strikes were considered to be a reasonable use of force.

11. When he did not respond to either the taser or the OC spray, and was even able to remove the active taser barbs from his body, the Officers could have no reasonable expectation about Mr. Tatum's ongoing abilities or behaviors. It became evident that Mr. Tatum was a danger to the Officers and everyone else in the facility, and potentially the surrounding community if he were able to escape from the building. The urgency to complete the arrest would only continue to intensify.

12. Baton strikes were used by both Officer Emmer and Officer Smith without success. Because the taser and OC spray had no impact on Mr. Tatum, the Officers had no accurate way to gauge the impact of the baton strikes on Mr. Tatum, and they had no definitive evidence during the incident of the extent of Mr. Tatum's injuries. Even after saying, "You broke me," Mr. Tatum remained non-compliant and even tried to stand.

13. Even after Mr. Tatum ceased being combative, the sense of urgency would remain due to the presence of the other individuals in the facility. Testimony was unanimous that the presence of the other residents of the Salvation Army facility exacerbated the danger of the situation. Since the Officers were succumbing to exhaustion and the effects of OC spray, and back up had not yet arrived, everyone remained at risk until Mr. Tatum was under control and handcuffed.

14. The Department's Use of Force policy makes allowances for officer exhaustion and for split-second decisions that must be made by officers in the field.

15. Notwithstanding the sense of urgency the Officers did attempt to de-escalate with voice commands. Mr. Tatum remained uncooperative and non-compliant with the Officers for 4.5 minutes - actively and passively resisting the efforts of the Officers to get him under control and place him in handcuffs.

16. By all accounts, 4.5 minutes is a long time to be actively engaged with a suspect. According to the PPCT Manual, the length and intensity of this situation would likely result in tunnel vision.

17. Since both the taser and OC spray had been completely ineffective, the baton strikes were the only viable means of force still available to the Officers. The strikes were used on permissible areas of Mr. Tatum's body, presumably, with the expectation that Mr. Tatum would eventually comply. It was on this task that the Officers were, clearly, focused. The

Officers could not foresee that, even with the use of force, Mr. Tatum would continue to be non-compliant.

18. The Use of Force policy does not prohibit baton strikes to a suspect's shins and does not specify the maximum number of baton strikes that are permissible in a given situation.

19. Because Officer Smith was guarding the door to prevent the other residents of the facility from entering the lobby, Officer Emmer assumed the lead on controlling Mr. Tatum and bringing him into compliance.

20. The actions of Officers Emmer and Smith were consistent with an initial determination that Mr. Tatum needed to be brought into compliance and handcuffed as quickly as possible. Nothing that occurred over the next 4.5 minutes called into question that initial determination. No testimony or evidence has called into question the propriety of that initial determination.

21. With the benefit of hindsight and more than 4.5 minutes to make a decision, it has been concluded by Chattanooga that the actions of Officer Emmer were in violation of the Department's Use of Force Policy and that other alternatives were available to accomplish the arrest. Based upon all of the evidence submitted during the de novo hearing, this conclusion was in error.

22. It is considered to be best practice to have a suspect under control before attempting to place him in handcuffs. No suggestions were made regarding an alternative use of force that would have brought Mr. Tatum into compliance and cooperation with an arrest.

23. It was suggested that Officers Emmer and Cooley had the option of handcuffing Mr. Tatum by force – placing a cuff on one arm and then, with whatever force was necessary, placing the cuff on the other arm, even if Mr. Tatum's wrist was broken in the process. Had this alternative actually been successful, it still would have resulted in a broken bone; and it most

certainly would have resulted in placing a potentially dangerous weapon (i.e. – metal handcuffs) in the possession of a non-compliant and potentially dangerous individual.

24. It was also suggested that Officers Emmer and Cooley had the option to discontinue their efforts to handcuff Mr. Tatum and wait for backup, but the Officers did not believe this option to be consistent with their training to complete an arrest as quickly as possible. This option was also not consistent with the exigent circumstances – potential complications from the other residents of the facility; a non-compliant suspect, with undetermined capabilities, who may also be armed with a second weapon; and exhausted police officers, also suffering from the effects of OC spray, who had to call several times and wait several minutes for the arrival of backup.

25. Clearly, the size and strength of Officers Emmer and Smith were not sufficient to subdue Mr. Tatum from the beginning when they were still fresh. After several minutes of active engagement, their ability to subdue Mr. Tatum, through any means, would have been greatly diminished, especially if he were to engage in active resistance. A use of force to keep Mr. Tatum subdued and under control may have been the only viable option. It is impossible to say what Mr. Tatum may have done had he been given the opportunity to act, but it could have endangered the Officers or required the use of deadly force.

26. The level of Mr. Tatum's resistance was not the only necessary consideration.

27. It was generally agreed that the situation with Mr. Tatum was not ordinary or commonplace, and it was a challenge to the training and experience of the responding Officers.

28. Diminished recall of various details, including the specific number of strikes, would be expected immediately after the incident and for some time thereafter.

29. Chattanooga has failed to prove by a preponderance of the evidence that the baton strikes employed by Officer Emmer were excessive, inappropriate, or unjustified.

30. Chattanooga contends that the punches to the face by Officer Cooley were excessive and unjustified. This contention is found to be without merit.

31. Officer Cooley responded to a distress call involving his fellow officers. He had prior knowledge that the Salvation Army facility was a halfway house for federal parolees and arrived at the facility in the midst of chaos – blood on the floor, OC spray lingering in the air, and two exhausted police officers. All of these factors provided the basis for Officer Cooley's actions, based on his awareness of danger.

32. Relying on his own assessment of danger, as well as the judgment of the Officers on the scene, Officer Cooley deployed his taser when asked to do so. It would seem that such trust between fellow police officers would be expected and necessary for resolution of crisis situations when hesitation and second-guessing could be deadly.

33. Based on Officer Cooley's own assessment of the situation, he determined, much like Officers Emmer and Smith, that it was necessary to get Mr. Tatum under control as quickly as possible. When, once again, the taser was not effective, he decided to escalate the use of force to strikes with a hard empty hand, which included strikes to the head. Although strikes to the head are included in the red danger zone, Officer Cooley concluded that this level of force was needed to get Mr. Tatum to roll over as no other use of force had achieved this necessary objective.

34. There is no evidence to dispute Officer Cooley's testimony that the strikes on Mr. Tatum with a hard empty hand were used in conjunction with efforts to force Mr. Tatum to roll over.

35. There is no evidence that the strikes to Mr. Tatum's face occurred while his head was lying on a hard surface.

36. The Use of Force policy does not prohibit strikes to the face, and Officer Cooley was not aware of any such prohibition.

37. The suggested use of the brachial stun as an alternative to strikes to the face would also involve the use of force within the red zone.

38. Officer Cooley's efforts got Mr. Tatum in handcuffs after 2.5 minutes with no permanent damage to any part of his body.

39. After being tased several times, sprayed in the face with OC spray, hit multiple times with a baton, and punched in the face and elsewhere, five police officers were still required to restrain Mr. Tatum so that he could be handcuffed. Thus, in hindsight, it is clear that Officers Emmer and Smith had no chance of controlling Mr. Tatum without additional assistance and that the use of force by Officer Cooley was necessary in order to make the arrest.

40. The Officers did not know until Mr. Tatum was in handcuffs that the immediate threat had been neutralized.

41. Chattanooga has failed to prove by a preponderance of the evidence that the hard empty hand strikes employed by Officer Cooley were excessive, inappropriate, or unjustified.

42. Chattanooga contends that there was no justification for Officer Emmer to shove or kick Mr. Tatum after he was in handcuffs. This contention is found to be without merit.

43. According to Office Emmer, he was concerned about Mr. Tatum spitting blood, and he used his foot to push Mr. Tatum back down on the ground when he made an attempt to stand.

44. Officer Emmer was appropriately concerned about Mr. Tatum spitting blood and was also justified in his effort to keep Mr. Tatum on the ground. Immediately following a seven-minute fight with Mr. Tatum, Officer Emmer may have applied more force than was necessary to accomplish his objective, but the suggested rational conversation with Mr. Tatum about possible

contamination seems a bit unrealistic. This use of force by Officer Emmer caused no harm to Mr. Tatum; and, based on the totality of the circumstances, this action, standing alone, does not warrant disciplinary action.

45. After considering the totality of the circumstances in this matter, including the employment history and record for each Officer, all the facts and circumstances in this case, and other use of force situations, it is determined that Chattanooga has failed to prove by a preponderance of the evidence that Officers Emmer and Cooley were properly terminated.

46. Neither Officer Emmer nor Officer Cooley arrived at the Salvation Army facility with the intent to beat and injure Mr. Tatum but were only using their training and experience to resolve a very difficult and unexpected situation as quickly as possible.

47. Unlike the other officer who only received a suspension for beating a suspect who was already in handcuffs, Officer Emmer and Cooley did not needlessly beat on a compliant suspect. The use of force continued only for as long as the active and passive resistance continued from Mr. Tatum, who had unusual and unexpected stamina from the effects of cocaine. The Officers had no way of knowing how long the conflict would last or at what point Mr. Tatum might comply, and the Officers could have been in jeopardy at any time if Mr. Tatum decided to go on the offensive.

48. The Officers had no way of knowing if and when the other residents of the facility would try to come through the door into the lobby. Had they chosen to do so, one of the residents could have been armed with Mr. Tatum's knife.

49. There were no allegations against the Officers of any deliberate misconduct, only that the Officers did not use good judgment and that their actions, under very trying circumstances, were not appropriate. However, even with the benefit of hindsight, no one has been able to offer a better approach for resolving the situation.

50. While the number of baton strikes may have been extraordinary, so was the level of Mr. Tatum's resistance.

51. Certainly, the use of force and the injuries sustained by Mr. Tatum were not ideal but neither were they dictated by the conduct of Officers Emmer and Cooley. As such, it would not be an acceptable ending to this situation to ruin the lives and careers of two otherwise unblemished and promising police officers who came across the path of Mr. Tatum only because he chose to violate his parole by taking cocaine, engaging in violent behavior, and disregarding lawful directives from law enforcement. It was Mr. Tatum, not Officers Emmer and Cooley, who set in motion this very regrettable chain of events as well as the unfortunate, but avoidable, conclusion.

52. Officers Emmer and Cooley paid a price for crossing paths with Mr. Tatum, but, because of their actions, no one paid the ultimate price.

53. Notwithstanding departmental policy, it does not appear that any deference was given to the Officers in the field who were dealing with a very difficult situation.

54. Notwithstanding departmental policy, Sergeant Turner was not given the opportunity to recommend appropriate discipline for Officers Emmer and Cooley who were under his direct supervision.

55. Notwithstanding departmental policy, Officers Emmer and Cooley were not treated like valuable assets and given the opportunity for retraining as specified in PER-6. However, no evidence was presented that additional training would have even been beneficial to address such an extraordinary situation – training cannot always prepare an officer for reality.

56. The Officers were never placed on notice, prior to the November 7, 2012 disciplinary hearing, that the June 14, 2012 incident might result in their termination from the Chattanooga Police Department. The Officers were not given notice of the evidence against

them. In the absence of proper notice, the Officers were unable to adequately prepare for their disciplinary hearings.


57. It is determined that Chattanooga has failed to prove by a preponderance of the evidence that the Grievants have violated Chattanooga's written rules, policies or procedures.

58. For all the reasons specified above, it is hereby **ORDERED** that the termination of Officer Sean Emmer and Officer Adam Cooley is **OVERTURNED**. The Officers shall be **REINSTATED** to their former positions with the Chattanooga Police Department and shall be made whole with full back pay, seniority, and benefits. The costs of this proceeding are assessed against the City of Chattanooga.

Pursuant to RESOLUTION NO. 26612 OF THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, §12, the policy reasons for this decision are to uphold the public's and the government's interest in consistent classified service policies and procedures and to ensure that city actions are carried out in accordance the City's Charter and other applicable laws.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 24TH day of SEPT 2013.


KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 24TH day of SEPTEMBER 2013.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPENDIX A TO INITIAL ORDER

NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error 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. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

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 Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of 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.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

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 a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after 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.