


## MEMORANDUM

To: Kevin Thompson

CC: Personnel File  
Ray "Butch" Kisiah, Director, Parks and Recreation

From: Roger L. Stancil, Town Manager 

Subject: Response to Your Step 4 Appeal

Date: May 10, 2013

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This memorandum is my response to your Step IV Appeal to the Personnel Appeals Committee February 12, 2013, appealing the decision of Ray "Butch" Kisiah, Director of Parks and Recreation, to terminate your employment with the Chapel Hill Parks and Recreation Department. In that appeal, your requested remedy was "Reinstatement and transfer from Robert Minick's authority and a full investigation of the anti-union and anti-grievance attitudes in the Town."

The Personnel Appeals Committee recommended that you be "reinstated as an employee of the Town of Chapel Hill, reversing the termination decision communicated to Mr. Thompson in the October 1, 2012, memorandum from Ray L. Kisiah, Jr., Director of Parks and Recreation. We further recommend that a lesser form of disciplinary action be taken to address the July 30, 2012 incident."

Section 14-130 of the Town Code of Ordinances provides that "after receiving the recommendation of the hearing panel of the personnel appeals committee, the town manager shall investigate the case, consider the recommendation of the committee and within fourteen (14) days transmit in writing to the employee(s) and to the mayor and members of the council the recommendation of the committee, and the manager's decision, which shall be final. In the event the recommendation of the personnel appeals committee is not followed, the manager shall state in writing the reasons why the recommendation was not followed." In communication between the Town's attorney and your representative, the 14 day timeframe was extended by mutual consent to allow time for my investigation.

In my investigation, I reviewed your personnel file and information on your grievance. I considered the report and recommendation of the Personnel Appeals Committee. I listened to the tape of the hearing before the Personnel Appeals Committee. I visited the site of the tree cutting and spoke with the Senior Vice President of the State Employees' Credit Union.

As a result of my investigation, I have decided to affirm the findings and decision of the Deputy Manager to "uphold the decision of Mr. Kisiah to terminate your employment with the Town of

Chapel Hill Parks and Recreation Department". This decision is not consistent with the Personnel Appeals Committee recommendation.

My decision is based on the following:

- Basic facts are not in dispute:
  - Mr. Thompson did cut a fallen limb on July 30 at the State Employees' Credit Union using Town equipment, directed a temporary Town employee who was with him to assist, placed the limb in a Town truck and hauled it away from the property. This work was accomplished while Mr. Thompson was being paid by the Town, as was the temporary employee.
  - Mr. Thompson does operate a tree service outside his employment with the Town and is called by the State Employees' Credit Union from time to time to do private work on their property.
  - Mr. Thompson returned to the Credit Union site and removed the rest of the tree on the weekend following July 30 (August 4-5).
- In a visit to the Credit Union, I learned the following from the Senior Vice President:
  - The fallen limb in question was completely on the Credit Union property, not interfering with sidewalk or bus stop operations in any way.
  - Mr. Thompson visited the Credit Union to make a personal deposit on July 30. While there, and in his capacity as the private tree service provider for the Credit Union, he agreed with the Credit Union to remove the limb and the entire tree for \$2500.
  - Payment has been made by the Credit Union to Mr. Thompson for \$2500.
- In the hearing before the Personnel Appeals Committee, in response to questions from his attorney, Mr. Thompson stated:
  - The limb was between the sidewalk of the bus stop and the right-of-way of the credit union, not on private property.
  - He did not profit from the removal of the limb.
  - He did not have a deal with the bank manager.
- Considering the information above, I believe the Committee did not have the benefit of a complete and accurate view of the business transaction that occurred:
  - Based on the information available to me, it is clear that the removal of the limb and the tree were private work for pay arranged before the work was done and totally on private property. This was a business arrangement between the Credit Union and their private tree service, owned by Kevin Thompson, made in advance of any work being done. Using Town time, equipment, personnel and vehicles for private gain is clearly, at least, "Careless, negligent, or improper use of town property or equipment" as cited in Section 14-103 (d)(6) of the Town Code. Improper use of Town property or equipment includes using that equipment for personal gain.
  - In addition to other performance and disciplinary issues, Mr. Thompson had received three previous warnings for improper use of Town equipment using a Town truck to do a personal errand, crashing into an arm gate, and striking a pedestrian while driving a Town truck.

In its findings, the Committee raised other issues of note:

- On December 10, 2010, Kevin Thompson received a Final Written Warning stating that “any future violations of Town policies and Procedures, including, but not limited to, incidents of detrimental personal conduct and/or unsatisfactory job performance, will result in immediate termination of your employment with the Town of Chapel Hill.” The incident under review occurred July 30, 2012, 19 months after the warning. While the Committee’s opinion is that the warning “should have included a time limit or expiration date if performance was improved or maintained”, neither the Town ordinance nor procedures require such a time limit.
- The Committee concluded that Mr. Thompson’s December 10, 2010 Final Written Warning should have included “specific steps for improvement.” Performance improvement plans are designed to respond to poor performance (e.g. low productivity, high error rate, etc.), not willful violations of policy (e.g. stealing, harassing, using Town equipment for personal gain, etc.).

Based on all the information available to me, I uphold the decision of Ray “Butch” Kisiah, Director of Parks and Recreation, to terminate your employment with the Chapel Hill Parks and Recreation Department. The Town Code states that the manager’s decision is the final determination on this matter.