

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

HAROLD CLARK

VS.

MISSISSIPPI DEPARTMENT OF TRANSPORTATION

FILED
JUL 23 2012
EMPLOYEE APPEALS BOARD

APPELLANT

NO: 11-021

RESPONDENT

ORDER OF HEARING OFFICER

PROCEDURAL HISTORY

THIS CAUSE having come on to be heard on June 28, 2012, in Jackson, Mississippi at the offices of the Employee Appeals Board. The Appellant, Harold Clark ("Clark") was unrepresented and the Respondent, the Mississippi Department of Transportation ("MDOT") was represented by the Honorable Joe Goff. Also present was Henry Morgan, Director General Services Division, MDOT, as the Agency Representative. Clark appeals his termination from employment effective May 2, 2011, based upon a number of Group III offenses: MSPB Chapter 7 1.C. 4, 11, and 16 falsification of records, acts of conduct occurring (sic) on the job (sic) related to job performance, and willful violation of MSPB policies...including giving a false statement in an investigation.

FINDINGS OF FACT

Clark was an eight (8) year employee of MDOT and a Sergeant at the time of his termination. His duties included inspecting trucks at the Kewanee Weigh Station located on Interstate 20 in Lauderdale County. The Kewanee Weight station is divided into two buildings, one on I:20 East, N-99 and one on I:20 West, N-100. Kewanee Weight Station employees typically work 171 hours in a twenty eight (28) day work cycle and are allowed to switch schedules with each other and use personal leave if they are off work. Clark's supervisor for five (5) years at the Kewanee Weight Station was Schumphert McIntosh. Effective March 8, 2011, Matt Lott became acting supervisor at the Kewanee Weight Station, assuming the duties of McIntosh. During the time in question in this case, March, 2011, Clark was also employed in Security at Rush Hospital in Meridian, MS.

Around the first of March, 2011, Clark requested of McIntosh that he be given the day of March 20, 2011 off to work his job at Rush Hospital and McIntosh agreed. Clark did not make this request to Lott after he assumed the Supervisory duties on March 8, 2011. Clark was subsequently scheduled to work March 20, 2011, at the N-99 Station on the morning shift beginning at 6 am and ending at 5 pm.; and employee Melanie Reeves, whom Clark supervised, was to work the afternoon shift beginning at 3 pm. and ending at 2 am. Another employee, Josh Robertson, was scheduled to work the morning shift, 6am to 5pm at the N-100 station; and employee, Bobby Boler, was also scheduled for the morning shift at Station N-99. On the morning of March 20, 2011, Robertson saw Clark's automobile at N-99 between 6 and 7 am but later noticed it was not there but a person was at N-99. Robertson called the Station and was told that Clark had left on a personal errand but would return. Robertson did not see Clark's vehicle for the remainder of his shift. Likewise, Reeves, who began work at 3 pm at N-99 did not see Clark. Reeves did find a document showing that Clark had clocked in that morning at 4:53 am and logged out at 3:58 pm. Reeves contacted Supervisor Lott with this information. Following an investigation, it was determined that Clark did work a full shift on March 20, 2011, 7:50 am to 4:00 pm at Rush Hospital. Clark maintained that he never arrived for work on March 20, 2011 as he was off that day.

CONCLUSIONS OF LAW

The rules of the Employee Appeals board place upon Clark the burden of proving by a preponderance of the evidence that the reasons stated in the Notice of MDOT's final decision to terminate him are not true or are not sufficient grounds for the action taken. MSPB Policy and Procedure Manual Ch. 10.7, XX. The Policy also states that if the personnel action taken by the responding agency is allowed under the policies, rules and regulations, the order *shall not alter* (emphasis added) the action taken by the agency. Ch. 10.7, XXIV. In this case, Clark has completely failed to meet his burden of proof and MDOT was well within the policy, rules and regulations of the State Personnel Board to terminate Clark.

Clark offered no substantive proof to support his contention that he never arrived for work at the N-99 station on March 20, 2011. There is ample evidence indicating that Clark's automobile was seen prior to 6 am at the N-99 weigh station and that he clocked in as having worked at the station that day. After clocking in, he left the N-99 weigh station and worked a full shift at Rush Hospital on March 20, 2011. Clark falsified or caused to be falsified MDOT

time records and lied to investigators about his working at the N-99 Station. Because of his actions, the MDOT was well within MSPB policies and procedures to charge Clark with the Group III offenses under Chapters 71.C 4, 11 and 16 and his termination is upheld.

IT IS THEREFORE ORDERED that the Termination of Harold Clark by the Mississippi Department of Transportation is hereby upheld.

IT IS FURTHER ORDERED THAT THE APPEAL OF HAROLD CLARK IS DISMISSED, WITH PREJUDICE.

SO ORDERED THIS THE 23RD DAY OF JULY, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD



**WESLA SULLIVAN LEECH
HEARING OFFICER**