

FILED
JUN 05 2012

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

EMPLOYEE APPEALS BOARD

SWANESSEE M. MARTIN

APPELLANT

VS.

DOCKET NO. 12-016

MISSISSIPPI DEPARTMENT OF CORRECTIONS

RESPONDENT

ORDER

A hearing was held on Swanesssee Martin's appeal on the 7th day of May, 2012. Swanesssee M. Martin (hereinafter "Martin" or "Appellant") was represented by Ellis Pittman. The Mississippi Department of Corrections (hereinafter "MDOC") was represented by David Scott.

FINDINGS OF FACT

1. At all material times, Martin was an employee of the MDOC.
2. At all material times, Martin worked at the Mississippi State Penitentiary, Parchman, Mississippi.
3. Martin began her employment with the MDOC on or about August 8, 2008.
4. Martin was terminated from the MDOC with an effective termination date of March 21, 2012.
5. Martin's March 21, 2012, termination was based on the following reasons:

You called in and did not report for duty on the following dates:

August 20, 27, 2011 (sick)
September 17, 2011 (sick)

Insubordination, including, but not limited to, resisting management directives through actions and/or verbal exchange, and/or failure or refusal to follow supervisor's instruction, perform assigned work, or otherwise comply with applicable established written policy is a violation of Subparagraph Number 1 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of

Policies, Rules and Regulations updated March 2010.

Prior discipline which was used as a basis of accumulation of offenses in disciplinary actions, include:

1. You were suspended from duty without pay for three (3) working days in June 2011 for violation of Subparagraph Number 3 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated March 2010 (no report on February 5, 2011).
2. You were issued a written reprimand dated April 3, 2011 for violation of Subparagraph Number 1 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated March 2010 (called in on January 5, 2011 & February 6, 7, 8, 26, 2011).

According to the Mississippi State Employee's handbook, March 2010 edition, Group II Offenses may be disciplined by written reprimand and/or suspension without pay not to exceed five working days. Accumulation of two Group Two written reprimands within a one-year period may result in demotion or dismissal. Accumulation of one written reprimand for a Group Two Offense and three written reprimands for Group One offenses within a one year period may result in demotion or dismissal.

6. Martin's regular days off during the relevant time period were Thursdays and Fridays.
7. August 20, August 27, and September 17, 2011, were all Saturdays.
8. Martin was issued a written reprimand on April 3, 2011, for violation of Subparagraph Number 1 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated March 2010. (Called in on January 5, 2011 and February 6, 7, 8, 26, 2011).

9. Martin, by signing her April 3, 2011, written reprimand acknowledged receipt of the April 3, 2011, written reprimand.

10. Martin did not appeal her written reprimand dated April 3, 2011, to the Employee Appeals Board. Accordingly, Martin's April 3, 2011, written reprimand became final within fifteen (15) calendar days of April 3, 2011.

11. Martin's April 3, 2011, written reprimand stated as follows:

You are hereby counseled and encouraged to become familiar with rules, regulations, memorandums and other policies and directives relating to your job performance. The consequence of additional infractions of a like nature will result in further disciplinary action. (Emphasis in original)

12. Martin was suspended from duty for three (3) working days in June, 2011 for violation of Subparagraph Number 3 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations Updated March 2010. (No report on February 5, 2011).

13. Martin did not appeal her June, 2011, suspension without pay to the Employee Appeals Board. Therefore, Martin's June, 2011, suspension without pay became final within fifteen (15) calendar days of her June, 2011, written reprimand.

14. Martin called in and did not report for duty on August 20, 27, and September 17, 2011.

15. Martin's conduct in calling in on August 20, 27, and September 17, 2011, constituted an act of insubordination, a violation of Subparagraph 1 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated March, 2010.

CONCLUSIONS OF LAW

Martin, as the Appellant, has the burden of proof on her appeal. To prevail on her appeal, Martin must prove either that (1) the allegations upon which her termination were based are not true or (2) if true, those facts were not sufficient grounds for the action taken against Martin by the MDOC.

Having considered the testimony of all witnesses and exhibits introduced into evidence, I find that Martin failed to meet her burden of proof that the MDOC's allegation that she was insubordinate is untrue. Accordingly, Martin's termination from the MDOC is AFFIRMED. The reasons for my opinion are as follows.

Martin called in and did not report for work on January 5, 2011, and February 6, 7, 8, and 26, 2011. As a result of missing these five (5) days of work, Martin was issued a written reprimand on April 3, 2011. The written reprimand provided "The consequences of additional infractions of a like nature will result in further disciplinary action." (Emphasis in original).

Approximately two months after Martin's April 3, 2011, written reprimand, Martin received a three (3) day suspension without pay for "no report" on February 5, 2011.

Notwithstanding receipt of a written reprimand and a three (3) day suspension without pay for her failure to work her scheduled days, Martin called in sick on August 20, 27, and September 17, 2011.

Martin, before she called in on August 20, 27 and September 17, 2011, had been advised in her April 3, 2011, written reprimand that future "infractions of a like nature [would] result in further disciplinary action." Martin received a more severe disciplinary

action in June of 2011 when she was suspended for three (3) days without pay for no report on February 5, 2011.

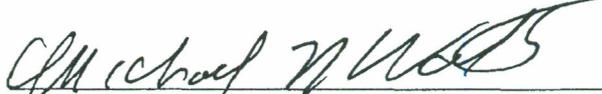
Within the first nine (9) months of 2011, Martin had incurred nine (9) days unexcused or unauthorized absences. As noted, prior to her calling in on August 20, 27, and September 17, 2011, she had been warned about her absences. Martin calling in on August 20, 27, and September 17, 2011, constituted insubordination and was a violation of Subparagraph Number 1 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated March, 2010.

The Mississippi State Employees Handbook, March, 2010 Edition, Group II Offenses provides that accumulation of two Group Two written reprimands within a one year period may result in demotion or dismissal. Martin, by receiving the April, 2011, written reprimand, by receiving the three day suspension without pay in June, 2011, and by committing insubordination by calling in and not reporting for duty on August 20, 27, and September 17, 2011, committed two (2), Group Two Offenses within one year. For these reasons, MDOC's termination of Martin is AFFIRMED. Martin's appeal is dismissed with prejudice.

SO ORDERED THIS THE 5 DAY OF June, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:



MICHAEL N. WATTS
Presiding Hearing Officer