

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

EMPLOYEE APPEALS BOARD

CHARLOTTE SMITH

APPELLANT

VS.

NO.9-089

**MISSISSIPPI DEPARTMENT OF
CORRECTIONS**

APPELLEE

ORDER

This cause came on for hearing on August 30, 2012, in Jackson, Mississippi. The Appellant, Charlotte Smith, was represented by Chokwe Lumumba, and David Scott represented The Mississippi Department of Corrections ("MDOC").

The Appellant, Charlotte Smith, was employed by The Appellee, MDOC, as a Correctional Psychological Evaluator. Smith was terminated from her employment on December 31, 2002, for the alleged commission of two Group Two No. One Offenses (specifically, refusal to follow her supervisor's instructions, and failure to notify her supervisor that she would not report to work); and one Group Three No. Nine and one Group Three No. 11 Offense (specifically threatening her supervisor). After a hearing before The MEAB, on November 4, 2003 The Hearing Officer found as follows:

[b]ased on the totality of the circumstances, the evidence of threats and coercing by the Appellant is without merit. The charges associated with the Group Three, No. Nine (9), and Group Three, No. 11, must be dismissed and all disciplinary action associated thereto rescinded . . .

The Appellant failed to meet her burden as to the two (2) Group Two (2) charges of insubordination. The Appellant could have received discipline ranging from a written reprimand to a suspension from duty for one work week on each charge or a demotion or dismissal.

With the more severe charges having been dismissed, this matter should be remanded back to the appointing authority to reconsider the appropriate disciplinary action based on this Order.

The November 4, 2003, Hearing Officer's Order was appealed to The MEAB Full Board by both parties. The MEAB Full Board affirmed the Hearing Officer's decision.

Subsequently, both parties appealed The MEAB Full Board Order to the Hinds County Circuit Court. On August 30, 2006, the Hinds County Circuit Court affirmed The MEAB decision, and remanded the matter back to The MEAB "for action consistent with the ruling of the court." Pursuant to that Order, The MDOC decided to terminate Smith based on the commission of the two Group Two violations in a one year period that were affirmed in the November 4, 2003, MEAB Order. On November 6, 2006, The MDOC mailed a letter to Smith notifying her of her termination, effective December 31, 2006. That letter was returned marked as undeliverable. Ten months later Smith's attorney contacted The MDOC regarding her reinstatement to employment and was notified that Smith had been terminated. On October 7, 2010, Twenty-three days following the receipt by Smith's attorney of the notice of termination, Smith filed a motion in Hinds County Circuit Court to enforce the November 4, 2003, judgement. On August 8, 2009, The Hinds County Circuit Court dismissed that Motion for lack of jurisdiction. On September 1, 2009, Smith filed a Motion to Enforce the November 4, 2003, judgement with The MEAB. On May 4, 2012, The MEAB dismissed that Motion for lack of jurisdiction, and that Order was later affirmed by The MEAB Full Board. The MEAB Full Board Order was appealed to the Hinds County Circuit Court, and on March 15, 2012, the Hinds County Circuit Court issued an Order stating as follows:

The Court finds that this case should be remanded to the State Employee Appeals Board for an Out of Time Appeal. The Mississippi Employees Appeals Handbook provides that an appellant's time for appeal expires 15 days after he receives notice of adverse action, or 15 days after that adverse action has been taken; whichever occurs first. In the present case the appellant's right to appeal under the rule expired November 21, 2006. This was 15 days after the termination and over 10 months before appellant counsel received notice of the termination. Since the passage of 15 days after the termination occurred long before any notice, appellant had absolutely no opportunity to comply with the rule. The Court also finds that because the MDOC did not seriously reconsider discipline in the absence of the two Group III offenses the MDOC should be compelled to comply with the Court and Board orders in this regard.

The Court, therefore having reviewed the briefs and submissions in regard

to said appeal and being fully advised in the premises therein, finds and orders that said case be REMANDED to the State Employee Appeals Board for an Out of Time Appeal.

The Original Hearing Officer who heard the evidence with regard to the two Group two charges of insubordination found that "The Appellant failed to meet her burden as to the two (2) Group Two (2) charges of insubordination." That determination was affirmed in the August 30, 2006, Order issued by the Hinds County Circuit Court. Accordingly, we accept as fact that Smith committed the two group two acts of insubordination. Therefore, the only determination for this tribunal to make is whether the Appellee correctly terminated Smith on the basis of those charges.

According to The MEAB rules as they existed in December of 2006, Smith had the burden of proving that the action taken against her was arbitrary, capricious, against the overwhelming weight of the evidence and merited the relief requested.

The Mississippi Supreme Court has defined arbitrary and capricious as follows:

"Arbitrary" means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequately determining principle; not done according to reason or judgment, but depending upon the will alone, --absolute in power, tyrannical, despotic, non-rational, --implying either a lack of understanding of or a disregard for the fundamental nature of things.

"Capricious" means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles . . .

Smith County School District v. Barnes, 90 So. 3d (Miss. 2012), *St. Dominic-Jackson*

Memorial Hosp. V. Mississippi State Department of Health, 910 So. 1077 (Miss. 2005),

Attalla County Board of Supervisors v. Mississippi State Department of Health, 867 So. 2d 1019 (Miss. 2004).

Smith submitted copies of other disciplinary actions taken by The MDOC in which employees were charged with Group III offenses, and were reprimanded or suspended, as evidence that Smith's termination was arbitrary or capricious. What those disciplinary

actions have in common is that the underlying facts and circumstances, on which the disciplinary actions were based, involved actions on the part of the employees evidencing a temporary lack of judgement with regard to inmates. None of the cases involved charges of insubordination for failure or refusal to follow a supervisor's directive. Consequently, it was not arbitrary or capricious for The MDOC not to consider, prior to Smith's initial termination, those disciplinary actions in determining what discipline Smith merited for the commission of two group two offenses of insubordination.,

Furthermore, The MDOC held an Administrative Review Hearing wherein the Hearing Officer determined that Smith twice defied her Supervisor's directions. The MEAB Hearing Officer affirmed that finding. The MDOC was under no obligation to hold another Administrative Hearing in the matter. All The MDOC was required to do was reconsider the discipline imposed for those offenses. Smith's case was reviewed by the Agency's attorney and approved by the Agency's Director. There is no evidence that the review and concurrence were arbitrary or capricious as defined by the Mississippi Supreme Court.

For the foregoing reasons, Smith's termination is affirmed effective December 31, 2006. Therefore, Smith is awarded back pay and benefits from January 1, 2003, to December 31, 2006, subject to any offset for wages earned during that period.

SO ORDERED THIS THE 7th DAY OF November, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY: 
INGRID DAVE WILLIAMS
Hearing Officer