

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

ARVY TERRILL BELFOR

VS.

MISSISSIPPI DEPARTMENT OF REVENUE

FILED

DEC 10 2012

EMPLOYEE APPEALS BOARD

APPELLANT

NO. 12-040

RESPONDENT

ORDER

A hearing was held on Arvy Terrill Belfor's appeal on October 8, 2012, and October 31, 2012. Arvy Terrill Belfor (hereinafter "Belfor" or "Appellant") represented himself. The Mississippi Department of Revenue (hereinafter "MDOR") was represented by Abigal Marbury.

FINDINGS OF FACT

1. At all material times, Belfor was employed by the MDOR.
2. Belfor was issued a written reprimand on June 6, 2012, for the Group Two offense of insubordination.
3. Belfor was issued an additional written reprimand on June 8, 2012, for insubordination. Belfor's June 8, 2012, written reprimand also recommended Belfor be terminated.
4. Belfor was terminated with an effective date of June 29, 2012. Belfor's termination was predicated on his receipt of the June 6, 2012, written reprimand for the Group Two offense of insubordination and the June 8, 2012, written reprimand of insubordination.
5. Under the *Mississippi State Personnel Board Policy and Procedures Manual*, receipt of two Group Two written reprimands within one year is grounds for terminating a state employee, such as Belfor.

6. At all material times, Tim Thompson was the Northern Region Collections Director for the Office of Collection Activities for the MDOR.

7. At all material times, Tim Thompson was a supervisor of Belfor.

8. At all material times, H.L. Brinkley was a Revenue Officer Specialist for the MDOR and was a superior of Belfor.

9. Thompson, on June 6, 2012, sent an email to Belfor directing Belfor to meet with Thompson and Brinkley at 2:45 p.m. on June 6, 2012. Thompson's June 6, 2012, email to Belfor advised Belfor that Belfor's failure to attend the meeting on June 6, 2012, at 2:45 p.m. would be considered insubordination on Belfor's part.

10. On June 6, 2012, Thompson, via email dated June 6, 2012, informed Belfor that Belfor was required to meet with Thompson and Brinkley on June 8, 2012, at 10:30 a.m. Thompson's email to Belfor informed Belfor that his failure to attend the meeting on June 8, 2012, at 10:30 a.m. would be considered insubordination.

11. Belfor failed to attend the June 6, 2012, 2:45 p.m. meeting with Brinkley and Thompson.

12. Belfor's failure to attend the June 6, 2012, 2:45 p.m. meeting with Brinkley and Thompson was insubordination within the meaning of the *Mississippi State Personnel Board Policy and Procedures Manual* and was the commission of a Group Two offense.

13. Belfor failed to attend the June 8, 2012, 10:30 a.m. meeting with Brinkley and Thompson. Belfor's failure to attend the June 8, 2012, 10:30 a.m. meeting was insubordination by Belfor and the commission of a Group Two offense within the meaning of the *Mississippi State Personnel Board Policy and Procedures Manual*.

14. Belfor's receipt of a written reprimand on June 6, 2012, and the receipt of a written reprimand on June 8, 2012, was receipt of two written reprimands within one year, within the meaning of the *Mississippi State Personnel Board Policy and Procedures Manual*.

15. On June 8, 2012, Belfor was verbally told by Brinkley, before 10:30 a.m. on June 8, 2012, that a meeting was scheduled with Belfor, Brinkley and Thompson and that Belfor was required to attend the meeting.

16. Prior to 10:30 a.m. on June 8, 2012, Belfor had a conversation with Lamar Wilson. During the conversation, Belfor acknowledged to Wilson that he had a meeting with Brinkley and Thompson.

17. Belfor received sufficient notice of both the June 6, 2012, 2:45 meeting and the June 8, 2012, meeting in sufficient time to attend both meetings.

18. Belfor is a black male.

19. At all material times, Wayne Ray was the Director of the Office of Tax Enforcement of the Mississippi Department of Revenue and a superior of Belfor.

20. At all material times, Lamar Wilson was Director of the Human Resources Division of the Mississippi Department of Revenue.

21. Belfor was provided his pre-termination hearing.

CONCLUSIONS OF LAW

Belfor, as the Appellant, has the burden of proof on his appeal. *See, Mississippi State Personnel Board Policy and Procedures Manual 10.7.21(C)*. The Mississippi Supreme Court has explained that the administrative rule which places the burden of proof/persuasion on the employee is not merely semantics. Specifically, the Mississippi

Supreme Court stated in *Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999) the following:

The statute and administrative regulations clearly place the burden of persuasion on the aggrieved employee to demonstrate that the reasons given are not true. Rule 17, Administrative Rules of the Mississippi Employee Appeals Board; Miss. Code Ann. § 25-9-127 (1972). ... This is not mere semantics. Under our scheme, in a nutshell, ties go to the appointing authority. That is, unless the employee carries the burden of persuasion that the alleged conduct did not occur, the employee has no right to have the employment decision overturned. *Mississippi Employment Security Commission v. Collins*, 629 So. 2d 576, 580 (Miss. 1993); Miss. Code Ann. § 25-9-127.

Thus, to prevail on his appeal, Belfor must prove that either (1) the allegations upon which his termination were based are not true or (2) if true, those facts were not sufficient grounds for the action taken against Belfor by the MDOR.

Belfor has also asserted that he was subjected to a “hostile work” environment and that his termination resulted from a hostile work environment. Belfor also has the burden of proof on his hostile work environment allegation. To succeed on the claim of hostile work environment, Belfor must prove that he received disparate treatment on the basis of “race, color, religion, national origin, sex, age, disability or political affiliation.” *Mississippi State Personnel Board Policy and Procedures Manual* at 10.2(D).

Having considered the credibility of Belfor, H.L. Brinkley, Timothy Thompson, Wayne Ray, and Lamar Wilson, witnesses who testified at Belfor’s appeal hearing, and having considered all the exhibits that were introduced into evidence at Belfor’s appeal hearing, this tribunal finds that Belfor failed to meet his burden of proof on his hostile work environment allegations. Belfor also failed to meet his burden of proof that the MDOR’s

allegations that Belfor was insubordinate twice, within a year, were untrue and that his acts of insubordination were not sufficient grounds for his termination.

Belfor alleged in his EAB appeal that he was subjected to a hostile work environment. Although Belfor had a number of complaints about the way he was supervised and how he was treated on a number of different issues, he did not, in his questioning of MDOR witnesses or in his case-in-chief, develop facts to support that any hostile work environment claim was the result of his “race, color, religion, national origin, sex, disability or political affiliation.” At all times during Belfor’s cross-examination of MDOR witnesses, Brinkley, Thompson, Ray, and Wilson and during his very lengthy explanation of his version of the facts during his testimony in his case-in-chief, Belfor focused on his disagreement with his supervisors on a number of issues. However, Belfor adduced no facts that he was treated unfairly because of race or color. For example, Belfor questioned the need for the meetings on June 6 and June 8. He questioned why some taxpayers were, in Belfor’s view, provided preferential treatment. Belfor questioned why certain MDOR procedures were followed and why others were not. There were discussions about Belfor not timely completing MARS. The above examples are illustrative only of the type of complaints/questions Belfor posed and they are not meant to include all of the areas to which Belfor expressed concern.

Of importance, however, is that none of Belfor’s questions to witnesses specifically asked, suggested or adduced any facts that he received disparate treatment because of his “race, color, religion, national origin, sex, age, disability or political affiliation.” It was only at the conclusion of Belfor’s case-in-chief, when MDOR’s attorney requested that Belfor’s hostile work environment allegation be dismissed for failing to sustain his burden of proof on any discriminatory ground, that Belfor indicated his perceived hostile work environment

could be because of race or color. Even then, Belfor did not set forth any facts to substantiate discriminatory grounds. His position was that race “could” have been a basis.

It was obvious during the appeal hearing, from the testimony and observing the body language of Belfor, Thompson, Wilson, and Brinkley, that tension existed between Belfor and his superiors. The genesis of this tension appears to have started on May 31, 2012, when Belfor called in to report he would be late because of a flat tire, and because Belfor had discussed certain issues with his former supervisor, Sheffield, instead of his current superiors. Different discussions continued between Belfor, Thompson, and Brinkley about a number of issues over the ensuing week, until Belfor refused to attend the June 6, 2012, and June 8, 2012, meetings that led to his receipt of written reprimands for insubordination and ultimate termination. The tension and disgruntlement between Belfor and his superiors was not because of Belfor’s “race, color, religion, national origin, sex, age, disability or political affiliation,” but because Belfor and his superiors were not able to bridge their respective differences and personality conflicts.

In summary, this tribunal considered Belfor’s hostile work environment allegations under Section 10.2(D) of the *Mississippi State Personnel Board Policy and Procedures Manual* and the framework set forth under *McDonnell Douglas Corp v. Green*, 411 U.S. 792 (1973), and finds that Belfor failed to prove that he received disparate treatment because of his race, color or any other discretionary ground. Therefore, MDOR’s Motion to Dismiss Belfor’s hostile work environment claim is GRANTED.

The remaining issues are whether the MDOR’s allegations that Belfor failed to attend the June 6 and June 8, 2012, meetings were true and, if so, was Belfor’s insubordination sufficient grounds for his termination. In addition to Belfor’s rejected hostile work

environment defense, Belfor also suggested that he did not know about the 10:30 a.m. June 8, 2012, meeting because the email was sent to him after Belfor had left work on June 6, 2012. Belfor took administrative leave on June 7, 2012, and did not return to work until June 8, 2012. Belfor contends he did not review his emails on June 8, 2012, before the 10:30 a.m. meeting and thus, did not have notice of the meeting.

Whether Belfor reviewed his email on June 8, 2012, before the 10:30 a.m. meeting that day is not dispositive on whether he had notice of the June 8, 2012, meeting. Brinkley testified that he verbally discussed the meeting with Belfor at approximately 7:50 a.m. on June 8, 2012. Wilson testified that around 7:50 a.m. on June 8, 2012, he talked to Belfor. During the conversation with Wilson, Belfor said he had a meeting that day with Brinkley and Thompson, but he did not want to meet with them.

Belfor cross-examined both Brinkley and Wilson about their testimony. Belfor's cross-examination raised certain questions about their testimony and raised questions concerning whether the exact time they started the conversations with Belfor occurred was accurate. Although there were facts which suggested that the exact time of the conversations on June 8, 2012, may not have been correct, Wilson's and Brinkley's testimony that they discussed the June 8, 2012, 10:30 a.m. meeting before June 8, 2012, at 10:30 a.m. with Belfor was credible and Wilson and Brinkley's testimony established that Belfor was aware of the meeting at 10:30 a.m. on June 8, 2012, in sufficient time for him to have attended the meeting had he chosen to do so. Belfor chose not to attend either the June 8, 2012, 10:30 a.m. meeting or the June 6, 2012, 2:45 p.m. meeting. His failure to do so was insubordination on both June 6, 2012, and June 8, 2012. As a result, Belfor

committed two Group Two offenses within a one year period and Belfor's termination was appropriate.

This tribunal is bound by the *Mississippi State Personnel Board Policy and Procedures Manual*. Section 10.7.24(B) of that document provides:

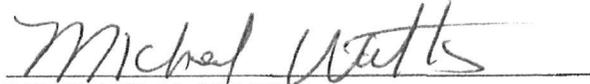
. . . If the responding agency has acted in accordance with the published policies, rules and regulations of the MSPB, and if the personnel action taken by the responding agency is allowed under said policies, rules and regulations, the EAB shall not alter the action taken by the agency

MDOR acted in accordance with MSPB policies and rules. Accordingly, this tribunal will not substitute as punishment a punishment less than MDOR's termination of Belfor. Accordingly, Belfor's termination is AFFIRMED and his appeal is dismissed with prejudice.

SO ORDERED THIS THE 10 DAY OF December, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:


MICHAEL N. WATTS
Presiding Hearing Officer