

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**KENNETH HOLLINS**

**APPELLANT**

**VS.**

**NO.12-027**

**MISSISSIPPI DEPARTMENT OF  
PUBLIC SAFETY**

**RESPONDENT**

**ORDER**

This cause came on for hearing on, September 25, 2012, in Jackson, Mississippi. The Appellant, Kenneth Hollins, was represented by Terence L. High, and the Appellee, Mississippi Department of Public Safety ("MDPS"), was represented by Timothy D. Smith.

Appellant, Hollins, is a Master Sergeant with MDPS. On May 3, 2012, Hollins was transferred from a position as Assistant Troop Commander of Troop K, Southern Region Enforcement to the Driver Services Bureau at MDPS. On May 9, 2012, Hollins filed a grievance regarding the transfer and asked that he be returned to the position of Assistant Troop Commander, and for the removal of the notice of transfer from his personnel file. On May 14, 2012, MDPS denied Hollins' grievance at the Agency Level. At all levels, Hollins' grievance was denied because MDPS regarded Hollins' transfer as a lateral transfer and, pursuant to Mississippi Personnel Board rules, lateral transfers are non grievable issues.

On May 25, 2012, Hollins filed this appeal with the Mississippi Employee Appeals Board. In his appeal Hollins alleges that MDPS took disciplinary action against him without according him due process or following MDPS procedures. Hollins, an African American, also alleges that he was removed from a supervisory position as a result of racial discrimination.

The following witnesses testified: Col. Donell Berry, Kenneth Hollins, Lt. Col. Mike D. Holmes, Natalie Holmes, and Lasedrick Horton. Having heard the testimony and reviewed the evidence, this tribunal finds as follows:

On April 20, 2012, Trooper Lasedrick Horton, who is 5'5" and weights 145 lbs. responded to an incident involving a father and his 16-year-old son. The 16-year-old was approximately 6'5" and 215 lbs. The father and son were involved in, what is best described, as a domestic dispute on the side of Highway 67. The 16-year-old became agitated and entered the traffic lane of the Highway. Horton ordered the son to get out of the traffic lane of the Highway. The 16-year-old did not obey Horton, so Horton and the father tried to remove the son from the traffic lane. The 16-year-old, Trooper Horton, and the father became involved in a tussle. Horton and the father subdued the son. Horton handcuffed the son and sat him on the hood of Horton's vehicle. Horton was visibly disturbed following the tussle. Horton intended to arrest the 16-year-old and charge him with disorderly conduct, resisting arrest and assault on a police officer. Hollins and several other officers arrived at the scene. All of the officers on the scene appeared to be armed. The father continued to threaten the son as he sat on the hood of Horton's vehicle. As Horton conferred with the other officers and the father, the 16-year-old visibly calmed down and relaxed. The son indicated to Hollins that the handcuffs were hurting him and Hollins removed the handcuffs. After the handcuffs were removed, the 16-year-old remained seated on the hood of the car.

After speaking with all of the parties involved, Hollins ordered Horton to let the father and son leave in their vehicle. Hollins also told Horton to fill out an incident report and report the incident to the Mississippi Department of Human Services. Horton later prepared a use of force report and at Hollins' direction indicated that the 16-year-old was restrained for his own safety. If not for Hollins' directions Horton would have also indicated that the 16-year-old was restrained to affect an arrest, and to defend another person. On May 3, 2012, Hollins was transferred from Troop K to Drivers Services. After Hollins was transferred, his replacement was white. On May 3, 2012, the 16-year-old was charged with resisting arrest and disorderly conduct.

At the time of the incident on Highway 67 Horton was a probationary employee. Following the incident Horton lost respect for Hollins and felt that Hollins would not support him in his decisions in the field. Following the incident on Highway 67, other troopers, throughout the state, became aware of it and called Horton about the incident.

Following this incident Hollins was transferred from his position as Assistant Troop Commander with supervisory responsibilities to the Driver's Services Bureau where he has neither a specific job title nor any supervisory responsibilities.

Hollins asserts that reassignment can be discriminatory, and this tribunal does not disagree with that assertion. However, there is no evidence to support Hollins' allegation that his transfer was a result of racial discrimination. This allegation of racial discrimination lacks merit.

Hollins further asserts that his transfer amounts to a disciplinary action, which would have required due process and State Personnel Board disciplinary policies and procedures to be implemented. MDPS counters that Hollins' transfer was not a form of discipline and hence was a non grievable action.

Clearly, Hollins was transferred because his supervisors were concerned about the way in which he handled the incident on Highway 67. In Hollins' position as Assistant Troop Commander, good judgement and the respect of his subordinates was of the highest priority. Hollins' supervisors were concerned about Hollins' lack of judgement in this situation. Generally speaking lapses in judgement constituting performance issues should not be the basis of disciplinary action in of themselves, and can be handled appropriately in the appraisal process. An Agency's decision to transfer an employee, due to performance issues, for the good of the Agency is specifically contemplated by the State Personnel Board regulations via its designation of transfers as non grievable issues. For that reason, absent evidence of discrimination, Hollins' transfer was a non grievable issue, and pursuant to MEAB Rule III. C. this tribunal lacks jurisdiction.

For the foregoing reasons this matter is dismissed.

SO ORDERED THIS THE 19th DAY OF December 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY:   
INGRID DAVE WILLIAMS  
Hearing Officer