

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

CONEISHA BROGER

APPELLANT

VS.

NO. 13-011

MISSISSIPPI DEPARTMENT OF CORRECTIONS

RESPONDENT

ORDER

Presently before the Mississippi Employee Appeals Board is the appeal by Coneisha Broger (hereafter "Broger" or "Appellant") of her termination by the Mississippi Department of Corrections (hereafter "MDOC"). A hearing was held on Broger's appeal on May 3, 2013. Broger represented herself. The Mississippi Department of Corrections (hereinafter "MDOC") was represented by David Scott.

Having considered the testimony of all witnesses who testified at the appeal hearing and having considered all exhibits introduced into evidence, this tribunal enters the following Order.

FINDINGS OF FACT

1. Broger began her employment with the MDOC on April 2, 2012.
2. Broger was terminated on January 23, 2013.
3. At the time of Broger's termination, she was a probationary employee with the MDOC.
4. By letter dated January 24, 2013, Broger was provided notice of her termination of her employment.
5. Broger's January 24, 2013, termination letter provided in pertinent part, the following:

You are hereby notified that your employment with the Mississippi Department of Corrections, to include your salary, is terminated effective January 23, 2013.

As a probationary employee, you may appeal this adverse decision only on the grounds of alleged acts of discrimination based on race, color, creed, religion, national origin, sex, age, disability, or political affiliation.

6. At the time of Broger's termination, she was a Trainee Correctional Officer with the MDOC and stationed at Parchman, Mississippi.

7. At the time of her termination, Broger worked at Unit 29, third shift, which was 4:00 p.m. to midnight.

8. On January 22, 2013, security of the MDOC held a random "shake down" of all MDOC employees that worked at Unit 29 of the Mississippi State Penitentiary. Broger's vehicle was not singled out to be searched.

9. During the "shake down" of Broger's car, unrolled loose tobacco was found in her vehicle. Broger did not intend to bring the tobacco onto the grounds of the MDOC at Parchman, Mississippi. The tobacco was in a grocery bag and was left in her car by her father who had borrowed her car.

10. On January 22, 2013, tobacco was considered contraband at the MDOC.

11. Broger was not terminated from the MDOC because of race.

12. Broger was not terminated from the MDOC because of age.

13. Broger was not terminated from the MDOC because of religion or political affiliation.

14. Broger was not terminated from the MDOC because of a disability.

15. Broger was not terminated from the MDOC because of her sex.

16. It was routine practice, prior to January 23, 2013, for the MDOC to terminate an employee who brought contraband, such as tobacco, onto the grounds of the MDOC.

17. The record in this matter is devoid of any evidence that a male employee similarly situated as Broger, i.e., a probationary employee, was discovered to have brought tobacco or other contraband on the grounds of the MDOC and was not terminated.

18. Ruth Washington, a black female, at all material times was the Director of the Personnel Department for the MDOC at Parchman, Mississippi. Ms. Washington had been Director of Personnel at Parchman, Mississippi, since approximately 1995.

CONCLUSIONS OF LAW

As the Appellant and employee, Broger has the burden of proof/persuasion that the allegations upon which her termination were based are either (1) untrue or, (2) if true, the actions taken by the MDOC in terminating her were not justified for the conduct that she engaged in. *See, Mississippi State Personnel Board Policy and Procedures Manual 10.7.21(C).*

The Mississippi Supreme Court has made clear 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.

In addition, Broger could avoid termination if it is shown that she was terminated because of her race, color, creed, religion, national origin, sex, age, disability or political affiliation. *See, Mississippi State Personnel Board Policy and Procedure Manual 10.2(D)* effective 10/01/2010. Broger admitted at her appeal hearing that she did not contend that she was terminated because of her race, color, creed, religion, national origin, age, disability or political affiliation. Broger said she [“thought”] that her termination was based on her sex. Broger’s belief that she was terminated because of her sex rested entirely on her subjective belief as opposed to any credible facts. Primarily, her belief was because of comments that had been made about her mother who had also previously worked at the MDOC. However, there was absolutely no credible evidence introduced at the appeal hearing to substantiate that Broger was terminated because she was a female. In fact, there was testimony by Ruth Washington, a black female, to the contrary.

Specifically, Ms. Washington, Director of the Personnel Department of the MDOC at Parchman, Mississippi, testified she was not aware of any discrimination of Broger and testified that she has no information that Broger was terminated because of being female. Ms. Washington further testified that the MDOC routinely terminates an employee, whether they are male or female, if the employee has brought contraband on grounds of the MDOC. Ms. Washington was aware of other employees, both male and female, who were terminated for bringing tobacco on the MDOC grounds.

This tribunal has analyzed Broger’s contention that she was terminated because of her sex, under the analysis set forth in *McDonnell Douglas Corp v. Green*, 411 U.S. 792

(1973). While Broger met her prima facie case that she is a member of a protected class, i.e., a female, Broger did not provide any credible evidence that she was terminated because of her sex. The MDOC provided a non-pretextual reason for Broger's termination. Accordingly, this tribunal finds as a fact that Broger was not terminated because she was female.

The MDOC is entitled to terminate a probationary employee such as Broger for any reason, or no reason, so long as the termination is not based on a discriminatory ground. Having found that Broger has not met her burden of proof that she was terminated because she was a female and having found she was terminated while a State probationary employee. Broger's termination is AFFIRMED. Her appeal is DISMISSED, with prejudice.

SO ORDERED THIS THE 28 DAY OF May, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: Michael Watts
MICHAEL N. WATTS
Presiding Hearing Officer