

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**EMPLOYEE APPEALS BOARD**

**LESEAN JACKSON**

**APPELLANT**

**VS.**

**NO. 12-081**

**MISSISSIPPI DEPARTMENT OF CORRECTIONS**

**RESPONDENT**

**ORDER**

Presently before the Mississippi Employee Appeals Board is the appeal by LeSean Jackson (hereafter "Jackson" or "Appellant") of his termination of employment by the Mississippi Department of Corrections (hereafter "MDOC"). A hearing was held on Jackson's appeal on February 20, 2013. Jackson was represented by John R. McNeal, Jr. 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. Jackson began employment with MDOC in January, 1996.
2. At all material times, Jackson was employed by the MDOC.
3. By letter dated December 5, 2012, Jackson was terminated from his employment with the MDOC with an effective date of December 5, 2012.

4. Jackson's termination was based on the following reason(s):

Group Three, #11:

"An act or acts of conduct, including but not limited to, the arrest or conviction for a felony or misdemeanor occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in an assigned

position could constitute negligence in regard to the agency's duties to the public or to other State employees."

Specifically, you, Captain LeSean Jackson violated MDOC Policy and Procedure 16-04-02 entitled "*Security Logs and Record-Reporting of Extraordinary Occurrences*," lines 24-30 which states "*All extraordinary occurrences will immediately be reported to the Senior Supervisor. During normal working hours, the Shift Supervisor will verbally advise the Superintendent or designees of all major extraordinary occurrences. During non-normal hours all major extraordinary occurrences will be reported to Senior Supervisor*," lines 34-36 which states, "*As soon as possible, but no later than the end of the shift, the Supervisor or Department Head will complete an Extraordinary Occurrence Report (EOR) and submit it to the Senior Supervisor*," and lines 259-263 which states "*Each Area Shift Supervisor will maintain Shift Supervisor Logs. These logs will reflect the time that counts are cleared, security checks, incidents and events relative to the security of the institution or area, and the name of oncoming and off going Area Shift Supervisor*." You witnessed several inmates in Section 5 and Section 6 out of their assigned cells, failed to complete and or make sure subordinates complete Incident Reports pertaining to this investigation, failed to notify the Senior Duty Officer of the above mentioned incident, and failed to complete Emergency Occurrence Report or Shift Supervisor Reports. You admitted that on September 6, 2012, you entered Section 5 and noticed approximately five (5) inmates were out of their assigned cells. You stated that you were informed by Offender Ross #13851 that inmates from Section 6 were allowed by Officer Smith to enter Section 5 and assault him. You stated you entered Section 6, along with Lieutenant Longino, and saw that Offender Bonner was out of his cell. You stated Offender Bonner informed you and Lieutenant Longino that he (Bonner) stole some "bricks from Offender Ross from underneath the tunnel doors." You stated you did not search for the contraband, nor did you inform your staff to search for the contraband. You did not notify the Senior Supervisor of the breach of security, complete an EOR or shift supervisor log, nor did you make sure paperwork was completed by your staff documenting the incident, prior to the end of their shift.

5. Jackson was provided his pre-termination hearing by the MDOC.

6. On September 6, 2012, Jackson was the Correctional Commander (Captain) and Shift Supervisor at Central Mississippi Correction Facility (hereafter "CMCF").

7. Jackson's duties on September 6, 2012, as the Shift Supervisor for CMCF (Receiving and Classification) included, but were not limited to, conducting security checks, making a proper count of offenders and supervising subordinate correctional officers.

8. On September 6, 2012, Jackson was working the Third Shift, which was 2:30 p.m. to 11:30 p.m. Jackson left work on September 6, 2012, at approximately 9:30 p.m. to begin medical leave for approximately three weeks.

9. At all material times, Units 5 and 6 of Receiving and Classification housed segregated inmates who were housed in single cells.

10. At all material times, Captain LeSean Jackson was the supervisor for Santonio Longino and other correctional officers who were working in CMCF's Receiving and Classification.

11. On September 6, 2012, Jackson received a request by MDOC CID Unit to go to Unit 5 and check on offender Ross and see if Ross had been assaulted. Jackson was told by CID to be inconspicuous when approaching Ross and to report his findings to CID.

12. On September 6, 2012, Jackson went to Ross' cell and asked Ross if he had been assaulted. Ross stated to Jackson he had been assaulted.

13. Ross, on September 6, 2012, told Jackson that he had been assaulted by other inmates. Ross told Jackson that the inmates who had assaulted him had been allowed in his unit (Unit 5) by correctional officer E. Smith (Eugene Smith). Eugene Smith was a subordinate of Jackson on September 6, 2012.

14. Jackson did not, on September 6, 2012, prepare a Shift Supervisor Log which documented, in any way, the fact that Ross had told him he had been assaulted by other inmates.

15. Standard Operating Procedure 16-04-02 of the MDOC, titled "Security Logs and Record-Reporting of Extraordinary Occurrences" lines 24-30 provides as follows:

All extraordinary occurrences will immediately be reported to the Senior Supervisor. During normal working hours, the Shift Supervisor will verbally advise the Superintendent or designees of all major extraordinary occurrences. During non-normal hours all major extraordinary occurrences will be reported to Senior Supervisor.

16. Standard Operating Procedure 16-04-02, lines 34-36 of the MDOC, provides as follows:

As soon as possible, but no later than the end of the shift, the Supervisor or Department Head will complete an Extraordinary Occurrence Report (EOR) and submit it to the Senior Supervisor.

17. Jackson, on September 6, 2012, saw offender Bonner outside his cell and Jackson searched Bonner. During this incident, Bonner told Jackson he took "some bricks from a big white boy." Bonner said he took the bricks from under the tunnel door [between Unit 5 and Unit 6].

18. Jackson assumed Bonner was referring to Ross as the person identified as "a big white boy."

19. Jackson did not, on September 6, 2012, prepare a Shift Supervisor Log which reflected that a brick had been reported to have been passed between one unit and another unit.

20. Jackson, as a Shift Supervisor, did not report on September 6, 2012, in the Shift Supervisor Log that Ross had reported to him that correctional officers under Jackson's supervision allowed inmates into his cell to assault Ross.

21. On September 6, 2012, Jackson, as a Shift Supervisor, did not prepare paperwork memorializing that an inmate had alleged that he had been assaulted by other inmates.

22. Prior to September 6, 2012, Jackson did not know what the word "brick" meant in prison language or slang.

23. For inmates in Unit 6 to have assaulted Ross who was housed in Unit 5, they would have been required to come from Unit 6 to Unit 5 through a hallway that existed between Unit 5 and Unit 6.

24. If an inmate goes from one unit [section] to another unit [section] this constitutes a breach of security.

25. Ross' allegation to Jackson, that correctional officers under Jackson's supervision had allowed inmates to come into his cell in Unit 5 and assault him, was an extraordinary occurrence within the meaning of MDOC Standard Operating Procedure 16-04-02, lines 24-30.

26. Ross advising Jackson that inmates from Unit 6 came into Unit 5 was notice to Jackson of a potential security breach and constituted an extraordinary occurrence within the meaning of MDOC Standard Operating Procedure 16-04-02.

27. A violation of Standard Operating Procedure 16-04-02 is a Group III offense within the meaning of *Mississippi Policy and Procedure Manual*. The commission of one Group III offense by Jackson was sufficient grounds for MDOC to terminate Jackson.

28. A Senior Supervisor within the meaning of MDOC Standard Operating Procedure 16-04-02 is defined as a "Superintendent, Warden (at all private prisons and county regional facilities) CWC or Community Correction Director."

29. Extraordinary Occurrence Report, within the meaning of MDOC Standard Operating Number Procedure 16-04-02, is defined as "[A] report that documents observation of incidents and actions which are beyond the usual, ordinary or established events."

30. Jackson did not verbally, or in writing, advise his Senior Supervisor on September 6, 2012, that a possible breach of security had occurred, to wit – inmates from Unit 6 going into Unit 5.

31. Jackson did not, on September 6, 2012, verbally or in writing, advise his Senior Supervisor that correctional officer Eugene Smith, an officer under his supervision, had allegedly allowed inmates from Unit 6 to Unit 5 to assault Ross.

32. Jackson, prior to leaving work at approximately 9:30 p.m. on September 6, 2012, instructed officer Santonio Longino to prepare an Extraordinary Occurrence Report memorializing the incident with Ross before Longino left work on September 6, 2012. Longino did not prepare the report before he left work on September 6, 2012, memorializing Ross' assault allegation.

### **CONCLUSIONS OF LAW**

As the Appellant and employee, Jackson has the burden of proof/persuasion that the allegations upon which his termination were based are either (1) untrue or, (2) if true, the actions taken by the MDOC in terminating him were not justified for the conduct that he

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.

Having considered the testimony of all witnesses who testified at the appeal hearing on February 20, 2013, and having considered the exhibits introduced into evidence, this tribunal finds as a fact that Jackson failed to meet his burden of proof/persuasion that the allegations upon which his termination were based were untrue or that the action taken by MDOC in terminating him was not justified. Accordingly, Jackson's termination is **AFFIRMED**. The reasons for this decision follow.

Jackson was advised by inmate Ross that Ross had been assaulted by other inmates who were allowed to come from Unit 6 to Unit 5 by a correctional officer (E. Smith). Smith was under Jackson's supervision. This allegation by Ross implicated a potential security breach and potential crimes by the inmates who were alleged to have assaulted Ross and the correctional officer(s) who were alleged to have allowed inmates into Ross' cell.

Jackson testified at the appeal hearing that he did not believe Ross had been assaulted. This was because officer Eugene Smith, and the other officers, told Jackson they had not allowed inmates from Unit 6 into Ross' cell in Unit 5 and because Ross' medical records prepared after the alleged assault did not show Ross sustained injuries. Jackson's subjective belief is not the determining factor as to whether an event is an extraordinary occurrence within the meaning of MDOC Standard Operating Procedure 16-04-02. An assault, of any type, on Ross would have implicated the crime of simple assault or aggravated assault. Further, allegations that a state employee, such as correctional officer "E. Smith" was allegedly complicit in the alleged assault against Ross potentially violates Federal Civil Rights laws, both criminal and civil and State civil and criminal laws.

An Extraordinary Occurrence Report (EOR) within the meaning of Standard Operating Procedure 16-04-02 is defined as "incidents and actions which are beyond the usual, ordinary or established events." See Standard Operating Procedure 16-04-02. (Emphasis added).

Jackson has not proven that the allegation by Ross that Ross was assaulted by inmates who were allegedly complicit with MDOC officers under Jackson's supervision (E. Smith) is a "usual, ordinary, or established event." Accordingly, Jackson failed to meet his burden of proof/persuasion that Ross' allegation was not an extraordinary event within the meaning of MDOC Standard Operating Procedure 16-04-02. Jackson failed to notify the Senior Supervisor of those alleged extraordinary events. Such failure was a Group III offense within the meaning of the *Mississippi State Personnel and Procedure Manual* and a sufficient basis for Jackson's termination. In addition, inmates allegedly committing a

breach of security by going from Unit 6 to Unit 5 was an extraordinary event and should have likewise been reported by Jackson to his Senior Supervisor as well.

Jackson also contends that he was told by CID to inconspicuously approach Ross, inquire if he had been assaulted and report back to CID with the information he learned. Jackson contends that since he did what CID asked him to do, that was all he was required to do. This argument is without merit. Jackson failed to follow an established Standard Operating Procedure. That procedure had an effective date of April 1, 2010, and had been in existence for over two years on September 6, 2012. Jackson cannot escape the ramification of his failure to follow MDOC's Standard Operating Procedure 16-04-02 because he did what CID told him to do. As Captain of his shift, and with approximately sixteen years of experience as a Correctional Officer, Jackson should have understood the significance of Standard Operating Procedure 16-04-02.

This tribunal also finds that Jackson did not meet his burden of proof on the allegation set forth in his December 5, 2012, termination letter which alleges he violated lines 34-36 of Standard Operating Procedure 16-04-02 which states "As soon as possible, but no later than the end of the shift, the supervisor . . . will complete an Extraordinary Occurrence Report (EOR) and submit it to the Senior Supervisor." Jackson contends that he did not complete the Extraordinary Occurrence Report (EOR) because he left early on medical leave and instructed Longino, his subordinate, to complete the report. Longino did not complete the report.

Jackson stated in his testimony at his appeal hearing that he did not leave work on September 6, 2012, until approximately 21:30 (9:30 p.m.). Although it is not known exactly when Ross advised Jackson of having allegedly been assaulted, Jackson, in his October 1,

2012, incident report indicates Ross talked to Jackson around 19:30 hours (7:30 p.m.), approximately two hours before Jackson left work on September 6, 2012. Jackson has not set forth any valid reason why he did not complete the EOR during this two hour time frame.

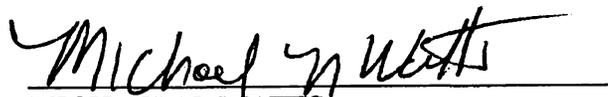
In summary, Jackson on September 6, 2012, was the Commander (Captain) and Shift Supervisor over Classification and Receiving of the CMCF of the MDOC. Inmate Ross told Jackson that inmates from Unit 6 had been allowed into Unit 5 where he was housed by E. Smith, a correctional officer under Jackson's supervision. Ross' statement alleged an extraordinary occurrence.

Jackson, as Shift Supervisor, was required by MDOC Standard Operating Procedure 16-04-02 to report all extraordinary occurrences to his Senior Supervisor and submit an Extraordinary Occurrence Report to his Senior Supervisor. Jackson did neither and such failure constituted a violation of a Group III offense and was an "act or conduct . . . which are plainly related to job performance and [was] of such a nature that to continue [Jackson] in an assigned position could constitute negligence in regard to the [MDOC's] duties to the public or other State employees." Accordingly, the MDOC's termination of Jackson was proper. Jackson's termination is AFFIRMED and his appeal is DISMISSED, with prejudice.

SO ORDERED THIS THE 18 DAY OF APRIL, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:

  
MICHAEL N. WATTS  
Presiding Hearing Officer