

FILED
MAR 18 2013

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

LAQUITA CARPENTER

APPELLANT

VS.

NO. 13-004

MISSISSIPPI DEPARTMENT OF CORRECTIONS

RESPONDENT

ORDER

Presently before the Mississippi Employee Appeals Board is the appeal by LaQuita Carpenter (hereafter "Ms. Carpenter" or "Appellant") of her termination from the Mississippi Department of Corrections (hereafter "MDOC"). A hearing was held on Ms. Carpenter's appeal on March 6, 2013. Ms. Carpenter represented herself. The MDOC was represented by David Scott.

Having considered the testimony of Ms. Carpenter and Lee McTeer, the only two witnesses to testify at the appeal hearing, and after considering all exhibits introduced into evidence, which consisted of Exhibits 1 - 10, this tribunal enters the following Order.

FINDINGS OF FACT

1. At all material times Ms. Carpenter was an employee of the MDOC.
2. Ms. Carpenter began her employment with the MDOC in 2007.
3. By letter dated December 19, 2012, Ms. Carpenter was terminated from the MDOC with an effective termination date of December 20, 2012.
4. Ms. Carpenter's December 19, 2012, termination letter provided the following basis for her termination:

Group III, #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 the

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

Specifically, on September 6, 2012 you were arrested and charged for disorderly conduct and failure to comply by the Greenwood Police Department. Additionally, you were fraternizing with an offender, Ervin Brown #90698, who was released from the Leflore County Restitution Center on August 18, 2012. Offender Ervin Brown is currently on probation and reports to Field Officer Woody Stokes in Greenwood, MS.

The aforementioned act of conduct constitutes violation of MDOC Policy 03-01, General Standards of Professional Conduct, lines 88-89, which states, "No employee will establish close friendships or fraternize with offenders or their immediately family, agent or other representative."

5. On the early morning hours of September 5, 2012, Ms. Carpenter was at a club in Greenwood, Mississippi, called Joe's Café. Ms. Carpenter drank alcohol while at Joe's Café.

6. When Ms. Carpenter left Joe's Café to go home her car would not start.

7. Ms. Carpenter called her daughter, Georgetta Smith, to come to Joe's Café and assist her because her car was not working.

8. Georgetta Smith and Smith's boyfriend, Vaughn Tanner, came to Joe's Café to assist Ms. Carpenter.

9. While Mr. Tanner was attempting to start Ms. Carpenter's vehicle, she laid down in the back seat of the car.

10. Ms. Carpenter fell asleep in the back seat of her car.

11. Some time later and approximately one block from Joe's Café, Ms. Carpenter was awakened by a Greenwood police officer tapping on the window of her car.

12. Ms. Carpenter was asked to exit her vehicle by the Greenwood police officer.
13. At the time Ms. Carpenter's car was stopped on September 5, 2012, it was being driven by Ervin Brown.
14. Prior to September 5, 2012, Ervin Brown had been a resident (inmate) of the MDOC housed at the Restitution Center in Greenwood, Mississippi.
15. Brown had been released from the MDOC facility approximately a year to a year and a half prior to September 5, 2012. At all material times Brown was on probation under the supervision of Mississippi Probation Officer Woody Stokes.
16. On September 5, 2012, Ms. Carpenter did not know that Brown was in her vehicle until her vehicle was stopped by the Greenwood police officer.
17. Brown, on September 5, 2012, was driving Ms. Carpenter's vehicle without her permission.
18. Brown was driving Ms. Carpenter's vehicle because Vaughn Tanner had requested Brown assist him in starting Ms. Carpenter's vehicle. Once the car was started, Brown was test-driving the vehicle and was stopped by an officer of the Greenwood Police Department.
19. On September 5, 2012, when Ms. Carpenter's vehicle was stopped by an officer of the Greenwood Police Department, the Greenwood police officer arrested Ms. Carpenter for disorderly conduct.
20. Ms. Carpenter's arrest for disorderly conduct by the Greenwood Police Department officer occurred because Ms. Carpenter asked a question about why her vehicle was being towed and because she made a request that the officer wait and not tow her vehicle until her parents arrived at the scene.

21. On September 5, 2012, Ms. Carpenter was not booked at the Greenwood Police Department, but was subsequently released and the disorderly conduct charges were not pursued further.

22. Ms. Carpenter was not convicted of disorderly conduct.

23. Ms. Carpenter's actions on the morning of September 5, 2012, and any of her conversations or conduct with the Greenwood Police Department did not constitute "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 the assigned position could constitute negligence in regard to the agency's duties to the public or to other State employees."

24. Ms. Carpenter had been an employee of the MDOC for over five years on September 5, 2012.

25. On or about March 26/27, 2012, Brown entered Ms. Carpenter's house in Greenwood, Mississippi, with a gun. The gun discharged in Brown's residence.

26. As a result of the March 26/27, 2012, incident, the Greenwood Police Department came to Ms. Carpenter's residence and arrested Brown.

27. Brown was not convicted of any crime for discharging the gun in Carpenter's house.

28. Several months after the March 26/27, 2012, incident Brown, uninvited, came back to Ms. Carpenter's residence.

29. Ms. Carpenter reported Brown's actions to her immediate supervisor, MDOC Commander Langdon.

30. Commander Langdon did not advise his supervisor, Mr. McTeer, that Ms. Carpenter was being threatened or harassed by Brown.

31. Ms. Carpenter reported Brown's harassment of her to Woody Stokes, Brown's probation officer.

32. Ms. Carpenter did not fraternize with Brown. All material contact between Brown and Ms. Carpenter was a result of Brown's actions, not Carpenter's.

33. From the time she began working for the MDOC up until the date of her termination, Ms. Carpenter had not missed any work during her five years of employment with the MDOC for either vacation or sick leave.

34. After working for the MDOC for five years, Ms. Carpenter was given a five year award by the MDOC.

35. During the period of time between Ms. Carpenter's arrest on September 5, 2012, and her termination on December 20, 2012, Ms. Carpenter did not miss any work at the MDOC and properly performed all of her job related duties with the MDOC.

36. At all material times Captain Langdon was a Captain for the MDOC and Ms. Carpenter's supervisor.

CONCLUSIONS OF LAW

As the Appellant and employee, Ms. Carpenter has the burden of proof. To prevail on her appeal, Ms. Carpenter must prove that the allegations upon which her termination were based are either untrue or, if true, the actions taken by the MDOC in terminating her was not justified for the conduct that she is alleged to have engaged in. *See, Mississippi State Personnel Board Policy and Procedures Manual 10.7.21(C)*. The Mississippi Supreme Court has stated 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 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 Ms. Carpenter and Mr. McTeer, the only two witnesses to testify at Ms. Carpenter's appeal hearing, and having considered all exhibits introduced into evidence, I find that Ms. Carpenter met her burden of proof and proved that both of the allegations set forth in her December, 19, 2012, termination letter, to wit: that she fraternized "with offender Ervin Brown" and that she engaged in "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 the assigned position could constitute negligence in regard to the agency's duties to the public or to other State employees," were untrue.

The reason for my opinion follows:

Mr. McTeer testified on behalf of the MDOC. Mr. McTeer is a very credible witness. However, much of Mr. McTeer's testimony was based on either hearsay, or hearsay within hearsay. For example, Mr. McTeer testified he was told things by Captain Langdon, read newspaper articles, and obtained some of his information from the Greenwood Police

Department reports. Mr. McTeer had no personal knowledge of any of the allegations against Ms. Carpenter set forth in her December 19, 2012, termination letter. Mr. McTeer testified, as the MDOC representative, that Ms. Carpenter had been a good employee during her entire period of employment with the MDOC. He confirmed, as the MDOC representative, that she had never missed a day of work during her time of employment with the MDOC. Further, Mr. McTeer testified that he had no personal knowledge of whether Brown had harassed, intimidated or threatened Ms. Carpenter. He stated that the first time he had heard of those potential facts was at the appeal hearing when Ms. Carpenter testified to those facts.

Ms. Carpenter testified and spoke at length at the appeal hearing. She testified that she did not fraternize with Ervin Brown and that Brown did not, and had not, lived with her. Ms. Carpenter testified Brown repeatedly harassed her and that she had requested Brown be arrested on several occasions for threatening her. She also testified she had advised her MDOC supervisor, Captain Langdon, of Brown's actions. She specifically denied any romantic or personal relationship with Brown.

Having carefully observed Ms. Carpenter's demeanor, including her body language, her tone of voice, and her response to questions on cross-examination by the attorney for the MDOC, I find Ms. Carpenter's testimony credible in all respects. More specifically, Ms. Carpenter's emotions as she explained the events surrounding the night of September 5, 2012, when her vehicle was stopped by the Greenwood Police Department and when she was arrested for disorderly conduct, as well as her explanation of the circumstances surrounding her non-romantic and non-personal involvement with Brown, were compelling.

Ms. Carpenter testified that on September 5, 2012, she was awakened from her sleep in the back seat of her car by a Greenwood police officer. It was only at that point that she realized that Brown was anywhere around her. She had not asked Brown to come with her daughter and Mr. Tanner to help with starting her car. She did not know Brown was driving her car until she was asked to step out of her car by the Greenwood police officer.

The MDOC also contended at Ms. Carpenter's appeal hearing that there was some personal relationship between Brown and Carpenter. One basis for this position by the MDOC was a newspaper article. Specifically, the MDOC introduced into evidence a clipping of a newspaper article from the Greenwood newspaper reporting a fire at Ms. Carpenter's house and which reported that Brown was a residence of Ms. Carpenter's house at that time. Ms. Carpenter denied that was true. I find Ms. Carpenter's testimony in this regard true and find Brown was not a resident of Ms. Carpenter's house at any time.

Although Ms. Carpenter was arrested by the Greenwood Police Department for disorderly conduct and failure to comply, those charges were subsequently dismissed or not prosecuted.

This tribunal is aware that the *Mississippi State Personnel Board Policy and Procedures Manual* (Manual) provides as follows:

Group III, #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 the assigned position could constitute negligence in regard to the agency's duties to the public or to other State employees."

However, this tribunal does not interpret that rule to mean that all employees who are arrested must automatically be terminated or that their termination must, as a matter of law, be affirmed. This would result in innocent people being terminated for no truthful reason.

Of more importance, however, is the Manual's requirement that termination be based on "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 the assigned position could constitute negligence in regard to the agency's duties to the public or to other State employees" (emphasis added).

Ms. Carpenter's arrest for disorderly conduct and failure to comply was not an act occurring off the job "which [is] plainly related to job performance." Ms. Carpenter testified that she was a good worker for the MDOC. She also testified that she had not missed a day of work and had no disciplinary write-ups in over five years of employment. She had received an award after working with the MDOC at five years. Ms. Carpenter continued to work for the MDOC after her arrest on September, 2012, and continued to properly do her job. She continued to come to work after September, 2012, in a timely manner and continued to perform her duties in a proper manner.

When questioned by Ms. Carpenter, Mr. McTeer in essence admitted that Ms. Carpenter had not, prior to or after her arrest in September, 2012, had any employment issues or employment problems with the MDOC.

All of these facts establish Ms. Carpenter met her burden proof that her being arrested for disorderly conduct and failure to comply did not affect her job performance

after her disorderly conduct arrest and her arrest did not constitute “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 the assigned position could constitute negligence in regard to the agency’s duties to the public or to other State employees.”

In summary, having considered the testimony of all witnesses who testified in this case, having gauged their credibility, and having carefully considered all of the exhibits, I find as a fact that Carpenter met her burden of proof and proved that she did not fraternize with offender Ervin Brown, nor did her arrest by officers of the Greenwood Police Department for disorderly conduct and failure to comply constitute “[a]n 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 the assigned position could constitute negligence in regard to the agency’s duties to the public or to other State employees.”

Accordingly, LaQuita Carpenter’s termination is REVERSED. The MDOC is directed to reinstate Carpenter to her employment status effective as of the date of her termination and to restore to her all of her rights and benefits including back pay, medical leave and personal leave to the extent allowed by law. It is also ordered that Ms. Carpenter be restored to all of her retirement benefits she would have been entitled to had she not been erroneously terminated, provided the integrity of such benefits remain uncompromised in accordance with all applicable laws, policies, rules and regulations.

MISSISSIPPI EMPLOYEE APPEALS BOARD

Michael N. Watts

By:

MICHAEL N. WATTS
Presiding Hearing Officer

SO ORDERED THIS THE 15 DAY OF March, 2013.