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BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

JARVIS WILLIAMS

FILED

APPELLANT

VS.

JUN 26 2013

NO. 12-068

MISSISSIPPI DEPARTMENT OF CORRECTIONS
EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER

Before the Mississippi Employee Appeals Board is the appeal by Jarvis Williams (hereafter "Williams" or "Appellant") of his termination by the Mississippi Department of Corrections (hereafter "MDOC"). A hearing was held on Williams' appeal on May 24, 2013. Williams was represented by John Cox. 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. At all material times, Williams was an employee of the MDOC.
2. By letter dated October 8, 2012, the MDOC terminated Williams' employment with an effective termination date of October 9, 2012.

3. MDOC's termination letter to Williams stated the following:

You are hereby notified that your employment with the Mississippi Department of Corrections, to include your salary, is terminated effective October 9, 2012.

Your termination is based upon the following reason(s):

1. On August 5, 2012, you were arrested by CID Investigators for Extortion and transported to the Sunflower County Jail where bond was set at [REDACTED]

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.

4. At all material times, including August 4, 2012, and August 5, 2012, Williams' work assignment was Unit 30 at the Mississippi State Penitentiary, Parchman, Mississippi.

5. At all material times Jason Myers (hereafter "Myers") and Jermaine Sims (hereafter "Sims") were inmates housed at Unit 30, Mississippi State Penitentiary.

6. On August 5, 2012, Williams had in his possession, and available for his use, a cell phone. That cell phone number was [REDACTED].

7. Williams' cell phone [REDACTED] was registered through C-Spire to his cousin, [REDACTED].

8. Williams was listed as a user on the C-Spire account for cell phone number [REDACTED].

9. Prior to August 5, 2012, Williams provided inmate Myers with his cell phone number, to wit [REDACTED].

10. On August 4, 2012, Williams received a text message from inmate Myers.

11. In the August 4, 2012, text message from Myers to Williams, Myers inquired of Williams if Williams could locate Myers a woman because Myers did not have much time remaining on his incarceration.

12. Myers, on August 4, 2012, also requested Williams to load money on a card for Myers.

13. On August 4, 2012, inmate Sims asked Williams to meet his girlfriend and pick up a package. Williams agreed to do so.

14. Prior to noon on August 5, 2012, Williams missed a call to his cell phone (662-721-7480) from an unknown number. Williams called the unknown phone number back.

15. At approximately 1:07 p.m. on August 5, 2012, Williams received a call on his cell phone (662-721-7480). This phone call was from Bridgett Peters (hereafter "Peters").

16. At all material times, Peters was an acquaintance of Sims, an inmate housed at Unit 30 of the Mississippi Department of Corrections, Parchman, Mississippi.

17. On August 5, 2012, at 8:28 a.m. Sims texted Peters the following message:

His name is Williams or Black tell him ur Sims
wife. I luv u n c u soon. MUAH

18. On August 5, 2012, Peters called Williams from the phone on which she received Sims' August 5, 2012, text and Peters spoke to Williams about meeting later on August 5, 2012. Williams was in his shower getting ready for work when he received Peters' call. Williams told Peters he had to put on his uniform and would meet her at Sonny's Store (convenience store) in Drew at approximately 1400 hours. Sonny's Store is also known as Timbo's.

19. Before 1600 hours on August 5, 2012, Williams drove to Sonny's Convenience Store in Drew, Mississippi.

20. While Williams was at Sonny's, Peters approached Williams and handed Williams a blue bag. Williams accepted the bag. Peters did not place the blue bag in Williams' vehicle.

21. The blue bag that [REDACTED] handed Williams, and which Williams accepted, contained five (5) twenty dollar (\$20.00) bills, that had been marked by an officer of the MDOC Criminal Investigation Division.

22. The blue bag that [REDACTED] handed Williams on August 5, 2012, and which was accepted by Williams on August 5, 2012, also contained nine (9) marked packages of tobacco.

23. The nine (9) packages of tobacco in the blue bag that Williams accepted from [REDACTED] was contraband within the meaning of MDOC policy and procedures.

24. After [REDACTED] delivered the blue bag containing the one hundred dollars (\$100.00) in marked currency and tobacco to Williams, Williams was arrested by Ron Ragon, Internal Affairs Coordinator for the CID at the Mississippi State Penitentiary. Following Williams' arrest, he was transported to the institutional grounds of the Mississippi State Penitentiary, Parchman, Mississippi.

25. Williams, after his arrest and before he was transported to the Mississippi State Penitentiary institutional grounds, was verbally advised of his Miranda rights.

26. When Williams arrived at the CID office at the Mississippi State Penitentiary, he was provided a Miranda warning form, which explained his constitutional rights. Williams signed the Miranda warning form and agreed to be interviewed by CID investigators.

27. On August 5, 2012, Williams provided a signed statement to Investigator Ragon and Joe Sullivan concerning the incident with [REDACTED] and leading to his arrest.

28. Williams, in his August 5, 2012, signed statement made a number of inculpatory admissions.

29. Williams' August 5, 2012, statement to MDOC Investigator Ragon, and Sullivan was voluntarily given by Williams. Williams' inculpatory admissions in his August 5, 2012, statement were freely made without coercion or threats by any MDOC employee after Williams was properly advised of his Miranda rights.

30. At all times during Williams' contact, discussions and agreements with Sims and/or Myers, Williams was acting under the color of state law.

CONCLUSIONS OF LAW

As the Appellant and employee, Williams has the burden of proof/persuasion that the allegations upon which his termination was 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. In *Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999) the court stated:

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 and having considered all of the exhibits introduced into evidence at the appeal hearing, this tribunal finds that Williams failed to meet his burden of proof/persuasion that the allegations upon which his termination is based were untrue and/or that the actions taken by the MDOC in terminating him were not justified for the conduct Williams engaged in. Accordingly, Williams' termination is AFFIRMED. The reason for this opinion follows.

Williams' October 8, 2012, termination letter stated the following reasons for his termination:

"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 the present case, the MDOC's termination of Williams was based on its determination that Williams had committed extortion by agreeing to accept money, \$100.00, to receive the nine (9) packages of tobacco and deliver them to inmates at the Mississippi State Penitentiary at Parchman.¹ The burden of proof was on Williams to prove that the allegations by the MDOC were untrue. Based on the evidence in this case, specifically the statement Williams gave on August 5, 2012, to CID Investigators Ron Ragon

¹Miss. Code Ann. § 97-11-3 provides in pertinent part as follows:

If any, . . . employee of the Mississippi Department of Corrections, should knowingly demand take or collect, under color of his office, any money fee or reward whatsoever, not authorized by law, or shall demand and receive, knowingly any fee for services not actually performed such officer so offending shall be guilty of extortion and on conviction shall be punished by a fine not exceeding \$5,000

and Joe Sullivan, this tribunal finds that Williams failed to meet his burden of proof, that the allegations by MDOC as set forth in his termination letter were untrue.

Specifically, Williams admitted in his August 5, 2012, statement to the following facts:

- (1) That he had been involved in a personal relationship with Jason Myers.**
- (2) That he gave inmate Myers his telephone number because Myers asked for it.**
- (3) That he received a text from inmate Myers on August 4, 2012, where Myers asked him to find a woman because Myers did not have much time remaining on his sentence.**
- (4) That on August 4, 2012, prior to his shift ending, he was approached by Jermaine Sims and Sims asked Williams to meet his girlfriend to pick up a package. Williams admitted that he agreed to pick up the package.**
- (5) Williams further admitted on August 5, 2012, he received a call from a female that he was supposed to meet and that he told her that he was putting on his uniform and would meet her at Sonny's store in Drew, Mississippi, at approximately 1400 hours.**
- (6) Williams further admitted that at approximately 1400 hours when he pulled into the gas pump at Sonny's store he was approached by a female and was handed a bag.**

Williams denied, at his appeal hearing, that he told Investigator Ragon the above incriminating facts, at least in the form reported in his statement. Williams contends his "words were twisted." This tribunal does not find Williams' testimony credible for the following reasons.

Williams admitted, both in his August 5, 2012, signed statement and at his appeal hearing, that he had fourteen (14) years of education and that he could read and write the English language. Williams further stated in his August 5, 2012, signed statement, and at the appeal hearing, that he was provided his Miranda rights by Investigator Ragon. Williams testified he understood his Miranda rights. In further support of his being properly advised of his Miranda rights, Williams executed a Miranda rights warning form.

Williams testified at the appeal hearing that he only gave the August 5, 2012, statement because Investigator Ragon told him that if he did not cooperate he would have the Justice Court Judge set his bond at \$100,000.00. Williams further stated that he did not read his August 5, 2012, statement before signing it.

Investigator Ragon testified at the appeal hearing. This undersigned hearing officer observed Investigator Ragon during both his direct and cross-examination. At no point during Ragon's testimony was any credible evidence elicited that Ragon threatened Williams for Williams to make the inculpatory statements set forth in Williams' August 5, 2012, statement or that Ragon did anything other than document what Williams told him. For that reason, this tribunal finds that Williams' August 5, 2012, inculpatory statements and admissions were freely and knowingly made by Williams.

As to Williams' argument he should not be bound by his August 5, 2012, statement because he did not read it before signing it, the law is clear in Mississippi that absent fraud,

a person who signs a writing is bound by the terms of that document even if he or she did not read it. *See, Community Care Center of Vicksburg v. Mason*, 966 So. 2d 220 (Miss. 2007). Accordingly, the fact that Williams may not have read the statement before he signed it is not a defense to its damaging content.

While the Employee Appeals Board may, in certain cases, reduce an agency's punishment of an employee if the Employee Appeals Board finds the punishment was too severe for the conduct committed by the employee, under the facts of this case, this tribunal finds that the MDOC's decision to terminate Williams was not too severe for Williams' improper conduct.

In summary, Williams failed to meet his burden of proof that the allegations upon which the MDOC based its termination were untrue or that the MDOC's action in terminating him was too severe for the conduct Williams engaged in. For this reason, Williams' termination is AFFIRMED. Williams' appeal is DISMISSED, with prejudice.

SO ORDERED THIS THE 26 DAY OF June, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:



MICHAEL N. WATTS
Presiding Hearing Officer