

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**AUTREY BOLDEN**

**APPELLANT**

**VS.**

**NO. 12-082**

**MISSISSIPPI DEPARTMENT OF CORRECTIONS**

**RESPONDENT**

**ORDER**

Presently before the Mississippi Employee Appeals Board is the appeal by Autrey Bolden (hereafter "Bolden" or "Appellant") of his three (3) day suspension by the Mississippi Department of Corrections (hereafter "MDOC"). A hearing was held on Bolden's appeal on February 22, 2013. Bolden represented himself. The Mississippi Department of Corrections (hereinafter "MDOC") was represented by David Scott.

Having considered the testimony of Commander Richard Armstrong, Autrey Bolden, and Jatedrick Flowers, the only witnesses to testify 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, Bolden was an employee of the MDOC. Bolden began his employment with the MDOC in November, 2007.

2. By letter dated November 20, 2012, Bolden was suspended without pay for three (3) working days.

3. Specifically, Bolden was suspended on the days of December 7, 8, 9, 2012.

4. Bolden's suspension letter was based on the following reasons:

On October 8, 2012, you violated feeding procedures during the feeding of E-Building offenders by allowing some offenders to get double trays, extra food, walk freely in the dining hall, etc. You made no attempt to stop the violations.

Insubordination, including, but not limited to, resisting management ruction (sic), perform assigned work, or otherwise comply with applicable established written policy is a violation of Subparagraph Number 1 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated March 2010.

5. Bolden did not violate feeding procedures during the feeding of E-Building offenders by allowing any offenders to get double trays, extra food, walk freely in the dining hall, etc.

6. Four offenders obtained diet trays after the offenders who received "non-diet trays" received their food trays.

7. All inmates only received what food they were entitled to receive as they came through the feeding line.

8. When the offenders came through the feeding line they were in single file.

9. On October 8, 2012, there were between 80 and 120 inmates in the dining hall during the feeding process.

10. On October 8, 2012, Commander Richard Armstrong was the Shift Commander during Bolden's shift.

11. On October 8, 2012, Commander Richard Armstrong was Bolden's superior.

12. On October 8, 2012, Warden Morris called Commander Armstrong and asked him to meet him at the E-Building dining hall. When Commander Armstrong arrived at the E-Building dining hall, Warden Morris and Commander Armstrong from the outside of E-Building dining hall looked through the window of the dining hall of E-Building into the dining hall's interior.

13. As Warden Morris and Commander Armstrong looked into the E-Building dining hall, through the windows, they saw some offenders sitting at dining tables and other offenders standing in the back of the dining room.

14. Warden Morris did not testify at Bolden's appeal hearing.

15. On October 8, 2012, during the incident alleged in Bolden's termination letter, the shift was short staffed and only Flowers and Bolden were working in the dining hall at the time Warden Morris and Commander Armstrong looked into the dining hall.

16. There was no personality or other conflict between Bolden and Warden Morris or Bolden and Commander Armstrong.

17. On October 8, 2012, no offenders were allowed to walk freely within the dining hall of E-Building during Bolden's presence.

18. On October 8, 2012, after the offenders who received regular trays were seated at dining tables, there were four additional inmates who were served diet trays. These four offenders walked to the serving line, single file, after the other offenders had received their trays. Prior to those four inmates obtaining their diet trays they were standing at the back of the dining hall.

19. The offenders Commander Armstrong saw standing in back of the dining hall, while other offenders were seated, were the four offenders who received diet trays.

20. Jatedrick Flowers was suspended from duty for allegedly violating feeding procedure in E-Building.

21. Flowers did not appeal his suspension. Flowers did not have a personality problem or any conflict with Warden Morris or Commander Armstrong.

22. Bolden met his burden of proof/persuasion that he did not “. . . violat[e] feeding procedures during the feeding of E-Building offenders by allowing some offenders to get double trays, extra food, walk freely in the dining hall, etc.”

23. Commander Armstrong admitted at the appeal hearing that the MDOC was short staffed during the time period the inmates were being served their meal.

24. Captain Armstrong did not see any inmates get extra food.

25. Captain Armstrong did not see any inmates walking freely in the dining hall of E-Building during October 8, 2012, which would have necessitated a disciplinary report being written up.

#### **CONCLUSIONS OF LAW**

As the Appellant and employee, Bolden has the burden of proof that the allegations upon which his suspension were based are either untrue or, if true, the actions taken by the MDOC in suspending 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 Commander Armstrong, Autrey Bolden, and Jatedrick Flowers, having gauged their credibility, and having considered the exhibits introduced into evidence, I find that Autrey Bolden met his burden of proof that he did not allow offenders to “get double trays, extra food, walk freely in the dining hall, etc.” and that he “made no attempt to stop the violations” and that he proved those allegations were untrue. The reasons for my opinion follow.

The only persons who testified at the appeal hearing were Commander Armstrong, Autrey Bolden, and Jatedrick Flowers. Commander Armstrong is a long time twenty-five year employee of the MDOC. He is very credible and testified to what he believed to be accurate. However, Commander Armstrong’s statements and testimony primarily focused on what he observed looking through the window of the E-Building dining hall. He did not know which offenders were to receive regular trays or diet trays.

Commander Armstrong did not state during his testimony whether or not the inmates that he saw obtaining trays after the other inmates were seated, were inmates who received diet trays or if they were getting extra food. Commander Armstrong did testify that he saw inmates with more than one tray in front of them, but he did not see any offender being served additional food. Commander Armstrong also admitted that if any inmate had extra food, he may have received it from another inmate. Commander Armstrong did not state that he saw Bolden allow some “offenders to get double trays, extra food, and walk freely in the dining hall” as alleged in Bolden’s November 20, 2012, suspension letter.

Commander Armstrong was asked if he saw inmates walking freely. He stated he did not see any inmate walking freely that “would necessitate disciplinary report [to be] written up.”

Both Bolden and Flowers testified that the offenders that Commander Armstrong and Warden Morris saw obtaining trays and walking in the dining hall after all the other inmates were seated were four offenders who received diet trays. Both Flowers and Bolden testified that the inmates who received non-diet trays go through the feeding line first and then the remaining persons who received diet trays are allowed to obtain their trays. I find Officer Bolden and Jatedrick Flowers’ testimony in this regard credible, believable and I find as a fact that Bolden did not allow inmates to obtain extra food, get double trays or walk freely in the dining hall.

This finding does not suggest that Commander Armstrong’s testimony is untrue. As noted previously, Commander Armstrong is a very credible witness and the MDOC is fortunate to have such an employee working for it. However, Commander Armstrong’s view of what was occurring in the dining hall occurred from outside the dining hall and while looking through a window. He did not know whether or not the offenders he saw standing in back were inmates who were receiving their first tray because they were on a restricted diet as opposed to inmates who were obtaining extra food.

This tribunal, in reaching its decision in this matter, also finds significant Commander Armstrong’s testimony that there was supposed to be “at least three people [MDOC staff] in [the] dining room.” Because Bolden and Flowers were the only two MDOC officers in the dining hall during the feeding of inmates, they were limited in the amount of supervision they could provide given the number of inmates (80-115 to 120) under their supervision. Bolden emphatically testified at the appeal hearing that if he saw any inmate

obtaining extra food, extra trays or trying to walk freely in the dining room, he would have placed the offender in the holding tank and issued a RVR (Rules Violation Report) to the offender. Again, I find Bolden's testimony credible.

In summary, I find the testimony of Flowers and Bolden compelling and credible and find that Bolden met his burden of proof/persuasion that he did not allow inmates to "get double trays, extra food, walk freely in the dining hall, etc." as alleged in his November 20, 2012, letter of suspension. Therefore, Bolden's suspension is REVERSED. The MDOC is directed to pay him for the three (3) days if he has already served his suspension, or, if he has not served his suspension, then the three (3) day suspension is set aside and held for naught. Further, the MDOC is instructed to remove any adverse disciplinary comments concerning the October 8, 2012, incident and November 27, 2012, suspension letter from Bolden's personnel file.

SO ORDERED THIS THE 19 DAY OF March, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: Michael N. Watts  
MICHAEL N. WATTS  
Presiding Hearing Officer