

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

JOHN MCDANIEL  
BARBARA THOMPSON

**FILED**  
**AUG 30 2013**  
**EMPLOYEE APPEALS BOARD**

APPELLANTS

VS.

NO.13-021  
13-022

MISSISSIPPI DEPARTMENT OF  
CORRECTIONS

APPELLEE

ORDER

John McDaniel and Barbara Thompson filed separate appeals of their terminations from the Mississippi Department of Corrections ("MDOC") on March 15, 2013. On April 19, 2013, this tribunal entered an order of consolidation consolidating those appeals. These causes came on for hearing on June 4, 2013, and July 2, 2013, in Jackson, Mississippi. The Appellants were represented by John McNeal, and David Scott represented the MDOC.

**SUMMARY**

John McDaniel and Barbara Thompson were employed as Correctional Officers by the MDOC at The Forrest County Community Work Center ("FCCWC"). On October 20, 2012, while McDaniel and Thompson were on duty, two inmates escaped from the FCCWC. The escape went undetected for several hours. At approximately 5:30 p.m., during the shift change, the escape was discovered. Following the

escape, while the inmates were absent from the facility, they murdered a woman. On February 28, 2013, McDaniel and Thompson were terminated based on the Group III offense of "a breach of agency security or confidentiality. Specifically . . . You failed to ensure that all necessary offender head counts were properly conducted at the Forrest County CWC on October 20, 2012. " McDaniel was also cited for the Group III, No. 4 offense of "Falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official State documents. . ." in that "on November 1, 2012, you provided a false signed statement to Investigator Cooksey regarding the activities on October 20, 2012." Thompson was also cited for the Group III No. 4 offense of "Falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official State documents." In that "On October 20, 2012, you also recorded inmate head counts in the Unit Register which had not been conducted. The Unit Register for Saturday, October 20, 2012, indicated that formal head counts were conducted at 0543 hours, 0700 hours, 0800 hours, 0900 hours, 1000 hours, 1100 hours, 1150 hours, 1300 hours, 1400 hours, 1500 hours, 1600 hours, 1645 hours and 1731 hours. All of the register entries were signed by you, Officer Thompson. Furthermore, on November 2, 2012, you provided a false signed statement to Investigator Cooksey

regarding the activities on October 20, 2012." This tribunal finds that the Appellants met their burden of proving that MDOC did not have sufficient grounds for the action taken because there was ample proof that The FCCWC was under staffed; that the MDOC inmate counting procedures had not been followed or enforced by MDOC or McDaniel and Thompson's supervisor, Commander Sherry Hearn; that the escaped inmates were incorrectly classified as suitable for The FCCWC; and McDaniel and Thompson were actually punished for a result not an action. McDaniel and Thompson and are reinstated to their positions at MDOC with all attendant back pay and benefits.

#### **FINDINGS**

McDaniel and Thompson and their immediate supervisor Commander Sherry Hearn provided credible testimony at the hearing.

John McDaniel was employed as a Correctional Officer IV at the FCCWC. In October of 2012, he had been employed with the MDOC for approximately 18 years and at the FCCWC for 9 years. In October of 2012, Barbara Thompson was employed as a Correctional Officer IV with the MDOC. At that time, Thompson had been employed with MDOC for approximately 18 years and at the FCCWC for approximately 15 years.

The FCCWC is a MDOC minimum security work facility. The FCCWC is primarily a base from which inmates are sent to work in the community.

The inmates were considered so safe that The FCCWC did not lock its gates in October of 2012. All of the inmates at the FCCWC were classified as minimum security inmates.

As was customary, McDaniel and Thompson were the only guards on duty at The FCCWC on Saturday, October 20, 2012. The Unit Register, which was maintained by Thompson, for Saturday, October 20, 2012, indicated that formal head counts were conducted at 0700 hours, 0800 hours, 0900 hours, 1000 hours, 1100 hours, 1150 hours, 1300 hours, 1400 hours, 1500 hours, 1600 hours and 1645 hours. All of the register entries were signed by Thompson.

Inmates Bass and Martin were noncompliant inmates. They refused to work, bathe, or comply with orders. Bass, in particular, was a difficult offender and should have been moved to a more secure facility. When McDaniel and Thompson counted the inmates at 1150 hours inmates David Bass and James Martin were in The FCCWC. Inmates Bass and Martin escaped from The FCCWC at approximately 1430 hours (2:30 p.m.) by simply lifting a wire fence and crawling under it.

When McDaniel and Thompson counted the inmates at 1645 hours (4:45 p.m.) they thought they accounted for all of the inmates. In the MDOC Escape Report completed by Thompson on October 20, 2012, she stated that all of the offenders were present at 5:00 p.m. and the

offenders were discovered to be missing at 5:30 p.m.

MDOC SOP Number 16-06-01 specifies the policy for Offender Count and Movement at Community Correction Centers. The policy states as follows:

Formal Counts are official counts conducted by staff within the center at least every hour. . . The facility has a system of physically counting offenders. There are at least three offender counts daily. . . All offenders in the center will be counted simultaneously, each at a specific location... A minimum of two (2) staff members is required to make a correct count. One staff member will count, using the recount roster, while the other observes and ensures that there is no movement. The counting officers will remain in the area counted until the count is verified and correct.

Both McDaniel and Thompson verified that, as a matter of practice, a formal count was conducted by making the inmates get on their beds and counting them – the inmates are not actually matched to the inmate roster, they are merely counted. Both McDaniel and Thompson testified that they had been allowed to conduct formal counts in this manner, that their supervisor was aware that they conducted formal counts in this manner, and that they had never been counseled or told to conduct formal counts in any other manner. Their supervisor, Commander Sherry Hearn, verified that she was aware that formal counts were not conducted every hour as prescribed by MDOC SOP Number 16-06-01. Hearn also testified that as a matter of practice it was customary to simply reconcile the count sheets to substitute for the formal counts. Hearn

stated that the count sheets were only used when the certified counts were conducted, three times daily. Hearn was aware that physical counts as prescribed by MDOC SOP Number 16-06-01 were only conducted three times a day. Hearn stated that daily activities at The FCCWC were not disrupted for formal counts, but that the correctional officers were expected to keep up with all offender movement.

The FCCWC has two zones, A zone and B zone which are separated by a corridor. Based on testimony from McDaniel, Thompson, and their immediate supervisor, Commander Hearn, a 24 year employee of MDOC, it is extremely difficult if not impossible to ensure that all inmates are counted simultaneously, with no movement, by only two officers. In order to properly count all of the inmates "simultaneously" in the manner described by MDOC policy at least three officers would be required.

The statement that McDaniel provided to MDOC states "I did three formal counts that day . . . Other than those; I did approximately three informal counts as well. I do not remember what times they were done. I do those randomly." Thompson additionally stated that a formal count was maintained by ascertaining that all of the counts maintained on the various inmate registers (worksheet, out roster, unit roster) were consistent. Hearn verified that she had condoned this method of counting

An inmate, Terry Green, gave a signed statement that verified that

"McDaniel closed the yard and called everyone in and told us to rack down for the count."

### OPINION

MEAB Rule XX provides that "[a]n appealing party shall have the burden of proving that the reasons stated in the notice of the agency's final decision are not true or are not sufficient grounds for the action taken. "

Both McDaniel and Thompson had been employed with MDOC for 18 years at the time of the escape which was the impetus for their termination. MDOC SOP Number 16-06-01 on Offender Count and Movement, as it existed at the time of the October 20, 2012, escape, was vague with regard to the specific procedures for each type of required count. However it is clear that the policy required a count in which "All offender movement and talking will cease until an accurate count is obtained. All offenders in the center will be counted simultaneously, each at a specific location. One staff member will count, using the recount roster . . . "at a minimum of once per hour. Thompson and McDaniel did not count the inmates on October 20, 2012, as prescribed by that MDOC policy. However, McDaniel and Thompson did conduct the counts pursuant to standard practice, which had been repeatedly condoned by their immediate supervisor. It was difficult if not impossible for McDaniel

and Thompson, as the only two officers on duty, to follow the policy as written. McDaniel and Thompson did not count competently at the 1645 hours (4:45 p.m.) count, and somehow missed the fact that two of the inmates were missing. Martin and Bass escaped at approximately 1430 hours (2:30 p.m.). Clearly, if McDaniel and Thompson had counted more carefully the inmate escape would have been detected at the 1645 hours (4:45 p.m.) count. As a result the escaped inmates had an additional 30 minutes before the inmate escape was discovered, during the count at the shift change. In McDaniel and Thompson's, termination letters MDOC correctly stated that they "failed to ensure that all necessary offender head counts were properly conducted at the Forrest County CWC on October 20, 2012."

However, it is more than evident that McDaniel/Thompson had not been required to follow the policy exactly as written, and in fact may not have been able to follow the policy exactly as written. The issue then is whether McDaniel/Thompson's failure to competently count, in the manner which they had been allowed to count, amounted to a "breach of agency security or confidentiality." There is no evidence that McDaniel or Thompson did or failed to do anything that contributed to the actual inmate escape at 1430 hours (2:30 p.m.) McDaniel and Thomson are actually charged with miscounting the inmates at 1445 hours (4:45 p.m.),

and as a result the initial search for the inmates was conducted as though the inmates had escaped within the 30-45 minute window between the 1645 hours (4:45 p.m.) formal count and the 1730 hours (5:30 p.m.) certified count at the shift change.

The question then is does the miscount at 1645 hours (4:45 p.m.) in and of itself constitute a breach of security. The obvious answer is no.

It is obvious that McDaniel and Thompson were terminated because their mistake prevented MDOC from conducting a proper search for the inmates and because the inmates committed a murder while they were out of the facility. These results are not evidence that McDaniel and Thompson's miscount constituted a breach of security.

McDaniel was also charged with providing a false signed statement to Investigator James Cooksey on November 1, 2012. In that statement McDaniel specifies that he did three formal counts that day, he did not verify that he did them competently. There is no evidence that McDaniel's statement was in any way false.

Thompson was also charged with recording formal head counts, when they were not conducted, and providing a false statement on November 2, 2012. McDaniel recorded the "formal" counts as allowed by her immediate supervisor. In her statement she specified that she participated in the three formal counts as specified in MDOC SOP Number

16-06-01, as had been condoned by her supervisor. Thompson's written statement includes the following wording "the offenders were allowed to go out on the rec yard until they were brought in at 1645 hours for supper. They were racked down and counted before feeding at that time. All offenders were present and accounted for." Thompson believed that all offenders were present and accounted for at feeding time on October 20, 2012. Her restatement of the facts as she believed them to be does not constitute a false statement.

For the foregoing reasons John McDaniel and Barbara Thompson's terminations from MDOC are reversed and they are reinstated with all rights and benefits including back pay, and attendant benefits to the date

**SO ORDERED THIS THE 30th DAY OF August, 2013.**

MISSISSIPPI EMPLOYEE APPEALS  
BOARD

BY:



**INGRID DAVE WILLIAMS**  
Hearing Officer