

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD **EMPLOYEE APPEALS BOARD**

SANTONIO LONGINO

APPELLANT

VS.

NO. 12-080

MISSISSIPPI DEPARTMENT OF CORRECTIONS

RESPONDENT

ORDER

Presently before the Mississippi Employee Appeals Board is the appeal by Santonio Longino (hereafter "Longino" or "Appellant") of his termination of employment by the Mississippi Department of Corrections (hereafter "MDOC"). A hearing was held on Longino's appeal on February 15, 2013. Longino 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. At all material times, Longino was employed by the MDOC.
2. By letter dated December 5, 2012, Longino was terminated from his employment with the MDOC with an effective date of December 5, 2012.
3. Longino'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, Lieutenant Santonio Longino 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 Captain Jackson, and saw that Offender Bonner was out of his cell. You stated Offender Bonner informed you and Captain Jackson that he (Bonner) stole some "bricks from Offender Ross from underneath the tunnel doors." You stated that Offender Bonner could not have stolen this contraband unless he and Offender Ross were in unauthorized areas. You stated you did not complete any paperwork regarding the incident, nor did you make sure your staff completed any paperwork prior to the end of their shift.

4. On September 6, 2012, Longino was the Correctional Supervisor (Lieutenant) and Area Shift Supervisor at Central Mississippi Correction Facility (hereafter "CMCF") Area I, Units 1 - 6. This Area I of CMCF included Receiving and Classification.

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

6. On September 6, 2012, Longino was working the Third Shift, which was 2:30 p.m. to 11:30 p.m.

7. At all material times, Sections 4, 5, and 6 of Area I of CMCF housed segregated inmates who were housed in single cells.

8. At all material times, Captain LeSean Jackson was Longino's supervisor.

9. At all material times, Captain LeSean Jackson was the Shift Supervisor for CMCF and the Senior Supervisor.

10. At all material times, Longino was an Area Shift Supervisor for Receiving and Classification of CMCF and all of Area I of the CMCF.

11. On September 6, 2012, an offender named Bonner told Captain Jackson that inmate Ross had slipped a "brick" under the door of one unit to another, through the mezzanine door.

12. A hallway separates Units 5 and 6 of Area I of the CMCF.

13. Longino understood a "brick" to mean some type of contraband, such as marijuana or tobacco.

14. Longino was told by offender Ross that Ross had been assaulted by other inmates.

15. Longino was told by offender Ross that an officer, or officers, under Longino's supervision had allowed inmates to enter Ross' area and assault Ross.

16. Longino did not, on September 6, 2012, prepare a Shift Supervisor Log which included the incident where Ross alleged he had been assaulted by other inmates. As an Area Shift Supervisor, Longino did not prepare a Shift Supervisor Log as required by MDOC Standard Operating Procedure 16-04-01. Standard Operating Procedure 16-04-01 of the MDOC, titled "Security Logs and Records" provides in pertinent part: "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 ongoing and offgoing Area Shift Supervisor."¹

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

18. Longino, as an Area Shift Supervisor, did not report on September 6, 2012, in the Shift Supervisor Log that an inmate had reported to him that correctional officers under Longino's supervision allowed inmates to assault him.

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

¹Longino's December 5, 2012, termination letter refers to a violation of MDOC Policy and Procedure 16-04-02. The correct number for the Standard Operating Procedure for the allegation against Longino, as reflected by Exhibit 2, is 16-04-01. While Longino's December 5, 2012, termination letter incorrectly identifies the procedure number that Longino allegedly violated, the substantive allegations against Longino are set forth correctly and provide him proper notice of the substantive reasons for his termination.

20. On October 12, 2012, Longino was issued a written reprimand as a disciplinary action for committing a Group Two, #3 violation for his “failure to report to work without giving required notice to supervisor.” Longino did not appeal his October 10, 2012, written reprimand and it became final within fifteen days of his receipt of it.

21. Longino was issued a written reprimand on September 14, 2012, for a Group Two, #1 violation. Specifically, Longino’s September 14, 2012, written reprimand was for “Insubordination, including, but not limited to resisting management directives through actions and/or verbal exchange, and/or failure or refusal to follow supervisor’s instruction, perform assigned work, or otherwise comply with applicable established written policy.” Longino did not appeal his September 14, 2012, written reprimand and it became final within fifteen days of him receiving written notification of that reprimand.

CONCLUSIONS OF LAW

As the Appellant and employee, Longino has the burden of proof/persuasion that the allegations upon which his termination were based are either untrue or, 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 15, 2013, and having considered the exhibits introduced into evidence, this tribunal finds as a fact that Longino failed to meet his burden of proof/persuasion that he did not engage 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 an assigned position could constitute negligence in regard to the agency’s duties to the public or to other State employees.” The reasons for that finding follow.

The evidence at the appeal hearing established that on September 6, 2012, Longino was the Supervisor for Area I of the CMCF. Area I consists of Units 1 - 6 of CMCF. Longino admitted that he was the Area Shift Supervisor for that area on September 6, 2012. Longino’s December 5, 2012, termination letter provides in pertinent part that “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” (emphasis added).

Longino admitted at his appeal hearing that he was advised by inmate Ross that Ross had been assaulted by inmates who were allowed into Ross’ cell by correctional officers. Longino stated at his appeal hearing he did not believe inmate Ross. Longino did not

believe Ross was being truthful about the assault because Ross' body sheet from the infirmary showed, in Longino's opinion, that Ross did not have any injuries and because none of the officers admitted that they had allowed inmates into Ross' cell. However, those facts are not dispositive of the issues in this case. Clearly Ross' reporting to Longino that he had been assaulted by other inmates, and that the inmates had been able to access his cell because of correctional officers under Longino's supervision, constituted an "incident" and "event" within the meaning of MDOC Policy and Procedure 16-04-01. The fact that Longino did not think Ross was telling the truth did not absolve Longino of his responsibility as the Area Shift Supervisor to report Ross' allegation in his Area Shift Supervisor Report.

In addition, Longino admitted at the appeal hearing that he received information that a "brick," which Longino understood to be contraband, was allegedly passed under the door of one unit into another area. Again, the question is not whether contraband was actually passed under the door of one unit to another, but whether or not such an incident or event was alleged to have occurred. There is no question that such an incident/event is alleged to have occurred. Longino admitted that fact. Both the allegations of Ross being assaulted and the passing of the "brick" from one unit to another were "incidents" and "events" within the meaning of the Standard Operating Procedure of the MDOC Policy and Procedure and as alleged in Longino's December 5, 2012, termination letter.

As reflected in the Findings of Fact, this tribunal does not find that Longino was the Shift Supervisor or Senior Supervisor for the entire CMCF as those terms are understood within MDOC's Policies and Procedures. For that reason, Longino met his burden of proof on the allegations that he violated MDOC Policy and Procedure 16-04-02 (16-04-01) by

failing to “immediately report to the Senior Supervisor an extraordinary occurrence or that during normal working hours, the Shift Supervisor will verbally advise the Superintendent or designees of all major extraordinary occurrences.” The Senior Supervisor and Shift Supervisor for the entire CMCF, during all pertinent times, was Captain LeSean Jackson. For this reason, Longino did not violate MDOC Policy and Procedure to the extent it placed obligations on the Shift Commander or the Senior Supervisor.²

Given that Longino met his burden of proof on some of the allegations against him as set forth in his December 5, 2012, termination letter, but not on all of the allegations set forth in his December 5, 2012, termination letter, a remaining question is whether his failure to meet his burden of proof/persuasion that, as an Area Shift Supervisor, he failed to memorialize the incidents of the alleged assault on inmate Ross and the alleged passing of the brick from one unit to another unit is sufficient for MDOC’s termination of Ross. Each of those two incidents, standing alone, constitute an “incident” and “event” within the meaning of the MDOC’s requirement that “each Area Shift Supervisor will maintain Shift Supervisor Logs. These logs will reflect that time counts are cleared, security checks, incidents and events relative to the security of the institution or area and the name of oncoming and offgoing Area Shift Supervisor.” Longino’s failure to maintain the Area Shift

²The only evidence that has been considered in reaching the decision in this case is the testimony adduced at Longino’s February 15, 2013, hearing and the exhibits introduced into evidence at his appeal hearing. Captain LeSean Jackson was also terminated. His appeal hearing was held on February 20, 2013. At that hearing, LeSean Jackson testified that he left work early and had instructed Lieutenant Longino to have reports prepared by subordinates so the reports could be forwarded up the chain of command. Because Mr. Longino was not a party in Captain LeSean Jackson’s case and the cases were not consolidated, no testimony of LeSean Jackson or any other witness in LeSean Jackson’s case was considered in reaching the decision in this case.

Supervisor Log and report the two incidents and events was a Group Three, #11 offense and constituted “an act or acts of conduct . . . which are plainly related to job performance and of such a nature that to continue the employee in the assigned position could constitute negligence in regard to the agency’s duty to the public or to other State employees.”

The MDOC was well within its right to terminate Longino for Longino’s failure to report or memorialize the incidents of the alleged assault on Ross, especially when Ross alleged that correctional officers under Longino’s supervision allowed the assault to occur. The MDOC’s continued employment of Longino could constitute negligence if the MDOC continued to allow Longino to work for it in any capacity, and especially in a supervisory capacity. Likewise, Longino’s failure to report the alleged transfer of the “brick” from one unit to another could also constitute negligence on behalf of the MDOC if it continued to employ Longino.

Longino was not an inexperienced officer. He had approximately ten years of experience and should have realized that the transferring of contraband within the facility, or an alleged assault by an inmate by other inmates, were serious incidents and events. In fact, Longino admitted during cross-examination by the MDOC’s attorney that an inmate being assaulted is “an extraordinary event.” Notwithstanding Longino’s admission that such an occurrence was an extraordinary event, he failed to take any steps to memorialize, in writing, what he had been told about those alleged incidents.

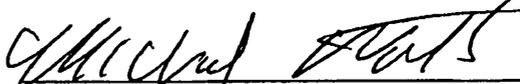
Longino did not appeal either his October 10, 2012, written reprimand or his September 14, 2012, written reprimand, both of which were Group Two offenses. A Group Three offense as alleged in Longino’s December 5, 2012, termination letter is alone a sufficient reason for the MDOC to terminate Ross. However, Ross had also received the

written reprimands on September 14, 2012, and October 10, 2012, and MDOC could consider those disciplinary actions as additional reasons for Longino's termination.

In summary, Longino was the Area Shift Supervisor for Area I of CMCF on September 6, 2012, on the third watch. During the third watch on September 6, 2012, Longino was informed by offender Ross that Ross had been assaulted by inmates who, according to Ross, had been allowed into Ross' cell by correctional officers under Longino's supervision. In addition, Longino had information on September 6, 2012, that contraband had been passed under the door of one unit area to another unit. Longino failed as Area Shift Supervisor to prepare an Area Shift Supervisor Log which memorialized, in any way, the incidents and events involving Ross allegedly being assaulted or the passing of the "brick," from one unit to another. Accordingly, Longino's termination is AFFIRMED. Longino's appeal is dismissed, with prejudice.

SO ORDERED THIS THE 1 DAY OF April, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: 
MICHAEL N. WATTS
Presiding Hearing Officer