

FILED
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BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD EMPLOYEE APPEALS BOARD

JOHN PAUL MCDANIEL &
BARBARA THOMPSON

APPELLANTS

VERSUS

DOCKET NOS. 13-021, 13-022

MISSISSIPPI DEPARTMENT OF CORRECTIONS

RESPONDENT

FULL BOARD ORDER

These consolidated matters came on for consideration before the Mississippi Employees Appeal Board ("MEAB"), en banc, on Appeal from the Mississippi Department of Corrections ("MDOC") of the Order of the Hearing Officer dated August 30, 2013, and the MEAB after having considered the Order, the Record in this case does find that the Order of the Hearing Officer is well-taken and should be Affirmed in its entirety.

John McDaniel and Barbara Thompson were employed as Correctional Officers by the MDOC at The Forrest Gary Community Work Center ("FGCWC"). They were terminated from their positions for breach of security and falsification of records after two inmates escaped. John McDaniel and Barbara Thompson appealed their terminations. On April 19, 2013, MEAB consolidated their appeals. MEAB hearings were held on June 4, 2013 and July 2, 2013. Hearing Officer, Ingrid D. Williams found as follows:

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 offenders 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 Thompson are actually charged with miscounting the inmates at 1645 hours (4:45 p.m.), and as a result the actual 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 falsified 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 they did them competently. There is no evidence 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 16-45 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.

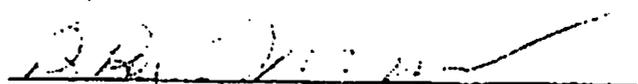
The rules and regulations of the Mississippi State Personal Board clearly allocates the burden of proof to the Appellants to show by a preponderance of the evidence that the reasons stated in their termination notices are not true or sufficient for the actions taken by MDOC.

It is clear through the record and testimony that while Thompson and McDaniel may not have conducted counts as set forth in MDOC SOP Number 16-06-01, they were not been required to follow the count policy exactly as written. Both parties believed their actions were proper and they only performing their duties as usually performed. Nothing in the record suggests the Appellants' actions contributed to the escape of the inmates, nor does the record support they intentionally made any false statements or attempted to conceal anything from MDOC.

In this case, there is creditable and sufficient evidence in the record to support Hearing Officer Williams' decision. For these reasons, the Hearing Officer's decision, dated August 30, 2013, reinstating John McDaniel and Barbara Thompson is proper and hereby AFFIRMED.

SO ORDERED, this the 3rd day of February, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD


B. RAY THERRELL, II