

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**MARCUS NEWSOME**

**APPELLANT**

**VS.**

**NO. 13-056**

**MISSISSIPPI DEPARTMENT OF CORRECTIONS**

**RESPONDENT**

**ORDER**

Before the Mississippi Employee Appeals Board is the appeal by Marcus Newsome ("Newsome" or "Appellant") for being terminated by the Mississippi Department of Corrections ("MDOC"). A hearing was held on Newsome's appeal on December 18, 2013. Newsome was represented by John R. McNeal, Jr. The 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. Newsome began his employment with the MDOC in December, 2002.
2. At all material times, Newsome was a K-9 officer for the MDOC.
3. On or about March 6, 2013, Newsome, along with MDOC Correctional Officer Thelma Dickerson, transferred inmate Zaccheaus Vasser to River Region Hospital in Vicksburg, Mississippi.
4. Vasser was transported to River Region Hospital to undergo surgery.
5. At approximately 1400 hours (2:00 p.m.) on March 6, 2013, Vasser entered the surgery room at River Region Hospital.
6. Following Vasser's surgery, Vasser was taken to a recovery room.

7. Vasser was later moved to room number 24 on the second floor of River Region Hospital.

8. Once in room number 24, Vasser was not restrained because Officers Newsome and Dickerson were told by Vasser's nurse that Vasser should not be restrained.

9. While Vasser was in room number 24, Newsome left room number 24 to go to his vehicle to obtain food.

10. After Newsome left room number 24, Dickerson was the only MDOC officer with Vasser.

11. While Newsome was out of room number 24, Vasser told Dickerson he needed to go to the restroom and Dickerson allowed Vasser to use the restroom.

12. Dickerson, a female, waited outside the restroom while Vasser was in the restroom.

13. At some point, Dickerson heard water running in the bathroom. Dickerson knocked on the restroom door, but did not receive a response from Vasser.

14. When Vasser did not respond to Dickerson's knock, Dickerson opened the restroom door. Vasser was not in the restroom. Vasser had escaped from the restroom through an adjoining door.

15. Following Vasser's escape, a search began for Vasser.

16. Dickerson began searching for Vasser by looking in rooms on the second floor of River Region Hospital.

17. While Dickerson was searching the second floor of the hospital for Vasser, Dickerson saw Newsome return to the second floor of River Region Hospital. At this time, Newsome was carrying food.

18. Dickerson told Newsome that Vasser was missing. Newsome threw the food away and began searching for Vasser.

19. Approximately seven minutes after the search for Vasser began, staff employed by River Region Hospital brought Vasser to room number 24 on the second floor of River Region Hospital.

20. Newsome did not return Vasser to the second floor of River Region Hospital.

21. Newsome was terminated from his employment as a Correctional Officer IV (Sergeant) by letter dated September 25, 2013, with an effective termination date of September 25, 2013.

22. Newsome's September 25, 2013, termination letter provided, in pertinent part, the following:

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

Group Three, #6: "Falsification of records, such as, but not limited to, vouchers, reports, time records, employment applications, or other State documents."

Specifically, you, Marcus Newsome, CO-IV violated MDOC Policy 13-1 entitled, "*General Standard of Professional Conduct*" which states, "*Employees are expected to conduct themselves in a dignified, honest and professional manner.*" You also violated MDOC Policy 12-02 entitled, "*Corrections Investigation Division Interviews and Polygraph Examinations,*" subtitle, "*Interviews in Administrative Matters,*" which states, "*Staff being interviewed in an administrative matter will be advised that questions will be related to the performance of their official duties or fitness for duty. The employee will answer fully and truthfully any questions for the purpose of administrative review. Refusal to do so could result in disciplinary action or charges being brought against the individual to include termination.*" You provided false information on Official Documents, in the form of an Incident Report and Written Statement, regarding the events that occurred on March 6, 2013 at River Region

Medical Center relating to Offender Zaccheaus Vasser's (#169241) actions which do not substantiate the statements provided by other MDOC staff and hospital staff.

On March 6, 2013, Offender Zaccheaus Vasser (#169241), attempted to escape the custody of Mississippi Department of Corrections (MDOC), while at River Region Medical Center, Vicksburg, MS. You and Correctional Officer III-Thelma Dickerson were on a security detail escorting Offender Vasser (#169241) to RRMCC, at approximately 1400 hours. You were not allowed to enter the operating room due to being armed. Officer Dickerson indicated that she escorted Offender Vasser to the bathroom located in room #24 and stood outside the door waiting for him to exit the bathroom. Officer Dickerson indicated she heard water and began to call Offender Vasser's name, but did not get a response from him. Officer Dickerson entered the bathroom and Offender Vasser was missing, she stated the bathroom was adjoined to a second room. Officer Dickerson indicated that she began to search the room as you entered the room with food. Officer Dickerson advised you that Offender Vasser was missing and you immediately dropped your food in the trash can and began to search for Offender Vasser. Approximately seven (7) minutes later, hospital staff entered with Offender Vasser.

According to the incident report you, along with Officer Dickerson and Offender Vasser exited the staging room at RRMCC, and headed for surgery. You stated that you were met at the door and was told that you were not allowed in the surgery room due to carrying a weapon. You stated you returned to the staging room. At approximately 1525 hours, Offender Vasser, Officer Dickerson, and the nurse entered the staging area and stated, "The surgery is complete," and Offender Vasser appeared to be asleep. You advised Officer Dickerson that you were going to the restroom at approximately 1540 hours. You were questioned as to why you did not use the restroom located in room #24 and you stated, they always use the staff restroom located in the hallway. You stated while in the restroom 5-7 minutes passed and you could hear the nurses and other hospital staff screaming, "He's gone." You stated that you returned to the room and asked Officer Dickerson what happened and she stated Offender Vasser was gone and he left out the restroom through the adjoining room.

Prior discipline(s), which may be used as a basis of accumulation of offenses in disciplinary action include a Three (3) Day Suspension December 26, 27, 28, 2012:

Group Two, #1: "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."

Specifically, you, Sergeant Newsome were observed by Deputy Warden Shivers on October 15, 2012 in the K9 office playing a game on your personal cell phone. Deputy Warden Shivers retrieved the cell phone and had Lieutenant Travis Crain to examine it and notified you to return it to your vehicle. Deputy Warden Shivers advised you that this was a violation of MDOC Policy and that you would receive disciplinary action for having your personal cell phone in your possession at the K9 Office.

24. Newsome, on March 6, 2013, submitted a signed incident report to his superiors setting forth certain facts.

25. Newsome's March 6, 2013, incident report was a State document within the meaning of the *Mississippi State Personnel Board Policy and Procedure Manual*. Newsome, in his signed March 6, 2013, incident report stated the following facts:

(a) At approximately 1554 hours, I, Sergeant Newsome, checked the stairwell and Offender Vasser (#169241) was apprehended at the bottom of the stairwell sitting on the step.

(b) I, Sergeant Newsome, placed handcuffs on Offender Vasser and escorted Offender Vasser (#169214) back to the staging area.

26. Newsome's statements set forth in his March 6, 2013, incident report and in Finding of Fact 24(a) and (b) were false.

27. Newsome's March 6, 2013, incident report submitted to his superior was "falsification of records, such as, but not limited to, vouchers, reports, time records, employment application or other State documents," within the meaning of the *Mississippi State Personnel Board Policy and Procedure Manual*.

28. Newsome did not apprehend Vasser at the bottom of the stairwell sitting on the step as Newsome stated in his March 6, 2013, incident report. Newsome's statement in his March 6, 2013, incident report that he did so was a false statement.

29. Newsome did not, as he stated in his March 6, 2013, incident report, place handcuffs on Vasser and escort Vasser back to the staging area. Newsome's statements that he did so were false statements.

30. At the time Newsome made the false statements, falsification of records, such as, but not limited to, vouchers, reports, time records, employment records, or other State documents was a Group Three offense within the meaning of the *Mississippi State Personnel Board Policy and Procedure Manual*.

### **CONCLUSIONS OF LAW**

As the Appellant and employee, Newsome has the burden of proof/persuasion that the allegations upon which his termination were 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, having judged their credibility and having considered all of the exhibits introduced into evidence at the appeal hearing, this tribunal finds as a fact that Newsome did not meet his burden of proof that the allegations upon which his September 25, 2013, termination were based were untrue, or that the actions taken by the MDOC in terminating Newsome were not justified for the conduct Newsome engaged in. The reasons for this tribunal's decision follow.

Newsome submitted, on March 6, 2013, an incident report to his supervisor setting forth his version of the Vasser incident. Newsome's March 6, 2013, incident report was a State document. Newsome, in his March 6, 2013, incident report made the following factual assertions:

- (a) At approximately 1554 hours, I, Sergeant Newsome, checked the stairwell and Offender Vasser (#169241) was apprehended at the bottom of the stairwell sitting on the step.
- (b) I, Sergeant Newsome, placed handcuffs on Offender Vasser and escorted Offender Vasser (#169214) back to the staging area.

This tribunal finds that Newsome failed to meet his burden of proof/persuasion to prove the statements were true.

Three witnesses testified at Newsome's December 18, 2013, appeal hearing. Those three witnesses were Marcus Newsome, Eddie Williams (a CID Officer), and Thelma Dickerson.

Newsome testified at his appeal hearing that he left room number 24 to go to the restroom and that while he was in the restroom Vasser escaped. Newsome further testified, at that hearing, that once he learned of Vasser's escape, he began a search for Vasser and that he located Vasser at the bottom of a stairwell that went from the second floor to the first floor of the hospital. Newsome testified that he apprehended Vasser at the bottom of the stairwell, placed handcuffs on Vasser, returned Vasser to room number 24, and restrained Vasser.

Eddie Williams, a MDOC officer with the Criminal Investigative Division (CID) testified concerning his investigation of Vasser's escape and Newsome's conduct. Officer Williams had no first-hand knowledge of the facts concerning Vasser's escape. Williams did have a number of signed statements from nurses employed by River Region Hospital. Williams stated what he was told by the nurses. The nurses' statements introduced through Williams repeating what they said were hearsay. While hearsay is not necessarily excluded from evidence in EAB appeal hearings, in this case this tribunal did not consider Officer Williams' testimony concerning what nurses and other River Region Hospital employees allegedly stated in reaching its decision. This tribunal, in reaching its decision, considered the conflicting testimony of Newsome and Thelma Dickerson.

Contrary to Newsome's testimony set forth, *supra*, Dickerson testified that she saw Vasser and a nurse "come around the corner" on the second floor of River Region Hospital. When the nurse came "around the corner," Newsome was not with the nurse and Vasser. Rather, according to Dickerson, Newsome was with other people who were generally standing or walking around in the area in front of the rooms on the second floor. It was clear to this tribunal from Dickerson's

testimony that Newsome, contrary to Newsome's testimony, did not locate Vasser at the bottom of the first floor stairwell and that Newsome did not return Vasser to River Region Hospital, with or without the assistance of a River Region Hospital nurse, handcuffed or otherwise. Dickerson clearly conveyed in her testimony that the River Region Hospital nurse, alone, brought Vasser to the River Regional Hospital second floor.

Thus, a question of fact exists between Newsome's version of events that Newsome apprehended Vasser "at the end of the stairwell . . ." and that Newsome "placed handcuffs on offender Vasser and escorted Vasser back to the staging area" and Dickerson's testimony that a River Region Hospital nurse brought Vasser to the second floor. This tribunal finds Dickerson's testimony that a nurse brought Vasser back to the second floor more credible than Newsome's. Dickerson was questioned by both the attorney for MDOC, by Newsome's attorney, and by the undersigned hearing officer. Throughout her testimony, Dickerson's demeanor was credible and believable, and compels this tribunal to accept her testimony as more credible than Newsome's, on all material issues.

In summary, this tribunal finds that Newsome failed to meet his burden of proof/persuasion that the allegations in his September 25, 2013, termination letter that he falsified his March 6, 2013, incident report was untrue, or that the State's termination of Newsome was not justified. Accordingly, Newsome's termination from the MDOC is AFFIRMED. Newsome's appeal is DISMISSED, with prejudice.

SO ORDERED, THIS THE 21 DAY OF JANUARY, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD

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