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BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

CEDRIC LOVE

FILED

APPELLANT

VS.

MAR 11 2014

NO.13-057

MISSISSIPPI DEPARTMENT OF  
CORRECTIONS

EMPLOYEE APPEALS BOARD

APPELLEE

ORDER

This cause came on for hearing on November 6, 2013, in Jackson, Mississippi. The Appellant, Cedric Love, was represented by John McNeal, and David Scott represented the Mississippi Department of Corrections ("MDOC").

SUMMARY

Cedric Love was employed as a Correctional Officer IV, with the rank of Sergeant, at the Central Mississippi Correctional Facility ("CMCF"). On September 11, 2013, Love was terminated from his employment with MDOC. The notice of termination states that Love was terminated for a Group II, No. 1 offense of "Insubordination, including, but not limited to . . . failure or refusal to . . . comply with applicable established written policy." The termination notice also cites Love for a Group III, Number 11 violation-- "An act or acts of conduct, . . . occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute

negligence in regard to the agency's duties to the public or to State employees." Specifically, CMCF alleged that Love assaulted an Offender with his "hands and/or body during an altercation that occurred on January 1, 2013", and "violated MDOC Policy 16-13-01, by not completing . . . paperwork, which states, 'Staff in state, private, and regional facilities will generate Use of Force reports on Offendertrak and forward through the chain of command. . . . 'The termination notice also states that Love "violated MDOC Policy 03-01 which states, 'Employees are expected to conduct themselves in a dignified, honest and professional manner.' [and] Additionally . . . violated MS Code Annotated 97-3-7 'Simple Assault; Aggravated Assault; Domestic Violence.'"

The termination also noted that MDOC considered prior disciplinary actions against Love—two written reprimands; one for insubordination because Love failed to follow MDOC policy on calling in, and the second for insubordination. Both of those reprimands were issued on August 30, 2012.

The Tribunal finds that Love assaulted an Offender and that his actions constitute a Group Three, No 11 Offense. Considering the testimony and evidence, it is evident that MDOC had sufficient grounds for Love's termination.

### FINDINGS:

Love usually worked the 11:00 p.m. to 7:00 a.m. shift in the quick bed area at CMCF. On January 1, 2013, there was an altercation in the Youthful Offender Unit of CMCF on the 3:00 p. m. to 11:00 p.m. shift. When Love reported to work he was advised of the altercation in the Youthful Offender Unit. Prior to January 1, 2013, Love had never worked in the Youthful Offender Unit and had not been trained to work in that area.

Shortly after Love reported to work, there was an altercation in the Youthful Offender Unit—basically inmates in A zone were fighting with inmates from B zone. During Love's shift he was ordered to report to the Youthful Offender Unit. When Love entered the Youthful Offender Unit it was chaotic. Love observed juvenile inmates wielding what he thought were broomsticks, but were actually pvc shower curtain rods. At some point, Love's supervisor, Halbert Williams, picked up a pvc pipe. When Williams, approached an Offender, [REDACTED] there was a physical altercation. A number of Officers including Love restrained [REDACTED]; and a group of Officers, including Love, and [REDACTED] fell down between two beds. [REDACTED] lay on the floor between the beds for some seconds, with some officers standing over him and others hitting him. Then the officers

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1 At the hearing testimony, documentary evidence, and video evidence were entered into the record.

picked him up and placed him face down on the floor in the center of the room in an open space. While he was in this position, one Officer is clearly visible hitting ██████ in the side of his body. Although it is difficult to see on the tape of the altercation, Love is sitting near ██████ head and appears to be assaulting him. Officer Marques Evans saw Love punch ██████ in the side. Officer Charles Walker saw Love knee ██████ in the eye and hit him in his side. At some point during this altercation, while ██████ was face down on the floor he lost consciousness. At all times while the Officers were attempting to control ██████ he was surrounded by at least eight Officers.

Pictures of ██████ taken after the altercation, show he has a hugely swollen completely closed and discolored left eye. The photographs also show that ██████ had red areas around his wrist and on the torso of his body. ██████ also reported that he had blurry vision in his left eye.

During the altercation with ██████ Love was injured. Once the altercation was over and the Youthful Offender Unit had been secured, Love went to the medical clinic at CMCF. After Love was released from the clinic, he signed a MDOC Incident Report, which had been prepared by Love's supervisors, Lieutenant Barnes and Commander Halbert Williams. The report documented an assault by ██████ on Williams, and

Love's injuries. The Incident Report was never entered into Offendertrak. Shortly after the report was completed Love was sent to the hospital. During the altercation in the Youthful Offender Unit Love had injured a disc, which eventually required surgery. Love was still under Doctor's care for the back injury at the time of the hearing.

Following the incident in the Youthful Offender unit Love was contacted by Warden Irby, but never received an order to fill out a Use of Force Report.

MDOC attempted to interview Love prior to his termination, but Love did not cooperate in providing MDOC with an interview.

MDOC SOP 16-13-01 states:

Written policy, procedure, and practice restrict the use of physical force to instances of justifiable self-defense, protection of others, protection of property, prevention of escapes, and to maintain or regain control, and then only as a last resort and in accordance with appropriate statutory authority. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to administrative staff for review.

Written policy, procedure, and practice provide that written reports are submitted to the warden/superintendent or designee no later than the conclusion of the tour of duty when any of the following occur:

... use of force to control inmates

### OPINION

This tribunal finds as follows: While Love may have failed to complete his paperwork with regard to the Use of Force, given Love's

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back injury it is impossible to determine that it was a deliberate failure or refusal to comply with established written policy, rather than a simple oversight, under the circumstances. However, the evidence is clear that Love participated in the use of excessive physical force to control inmate [REDACTED]. The use of excessive physical force is a violation of MDOC policy and is an act of conduct related to job performance and is of such nature that to continue Love in his position could constitute negligence in regard to the agency's duties to the public . . . MDOC had sufficient grounds for Love's termination.

For the foregoing reasons Love's termination from MDOC is affirmed.

**SO ORDERED THIS THE 11th DAY OF March, 2014.**

MISSISSIPPI EMPLOYEE APPEALS  
BOARD

BY:



**INGRID DAVE WILLIAMS**  
Hearing Officer