

**FILED**

**DEC 18 2013**

**EMPLOYEE APPEALS BOARD**

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**JASON T. KERR**

**APPEALING PARTY**

**VS.**

**DOCKET NUMBER: 13-001**

**MISSISSIPPI DEPARTMENT OF WILDLIFE,  
FISHERIES AND PARKS**

**RESPONDENT**

**AMENDED AGREED FINAL ORDER**

COME NOW, Respondent, the Mississippi Department of Wildlife, Fisheries and Parks (MDWFP), through counsel, and Jason T. Kerr, the Appellant in the above styled and numbered cause, also through counsel, to present this Agreed Order, as follows:

1. By the Order of the Hearing Officer dated August 13, 2013, the motion of Mr. Kerr to dismiss this appeal was granted in part, with the EAB retaining jurisdiction over the question of Mr. Kerr's status between the dates of June 9, 2012, through December 17, 2012. The parties are informed that the intent of the Hearing Officer was that Mr. Kerr be reinstated to his previous position (as of June 9, 2012), with full restoration of pay and benefits.
2. The MDWFP agrees that Jason T. Kerr is owed back pay from June 9, 2012 to December 17, 2012, and that this order contains the authorization required by the MDWFP, to initiate the process for making the necessary payment to Mr. Kerr. Furthermore, any calculations that are to be performed by the State Personnel Board and/or the Department of Finance and Administration, shall take into consideration that Jason Kerr was eligible for and would have received a promotion from Conservation Officer II to Conservation Officer III, on December 1, 2012, with all adjustments to salary and benefits which would have applied. This is based upon the fact that the MDWFP, operating under its appropriated budget and authority set forth in Section 5., of House Bill 1615 of

the 2012 Regular Legislative Session, had adequate funds and was not prohibited from effecting any promotions or adjustments in salary through promotions, career ladder or other method.<sup>1</sup> Thus the MDWFP determined that all eligible conservation officers serving in the Conservation Officer II classification with the appropriate amount of time served for advancement under the career ladder (which had been approved by the State Personnel Board in the 1990's), would be advanced to the rank of Conservation Officer III. Based upon the (present) understanding of the parties that Jason Kerr's employment was to have been reinstated as of June 9, 2012, Kerr was eligible for advancement to the rank of Conservation Officer III, on December 1, 2012. The award of back pay and benefits must include this advancement under the career ladder – albeit for the brief period of December 1 through December 17, 2012.

3. Jason T. Kerr has already dismissed this appeal of his termination as set forth in the August 13, 2013, order.

IT IS THEREFORE ORDERED, that the Appeal of Jason T. Kerr of his termination from the Mississippi Department of Wildlife, Fisheries, and Parks is confirmed as having been dismissed with prejudice.

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<sup>1</sup> Prior to the 2012 Regular Session, the Legislature had inserted restrictive language in the appropriations bills for most state agencies that prohibited any increases in salaries through promotion or reclassification, etc. In 2012, this language did not appear in the MDWFP's appropriations bill, allowing the agency some discretion to advance employees who had had no increase in pay or position for several years. The restrictive language (moratorium) was reinserted in the MDWFP's current budget in Section 5 of HB 1669, 2013 Regular Session, at lines 82-99: "Unless otherwise authorized in this act, no state agency shall take any action to promote or otherwise award salary increases through reallocation, reclassification, realignment, educational benchmark, career ladder, equity salary adjustment, or any other means to increase salaries of employees or positions unless specifically exempted by the following conditions: the award of teacher salary increments; the advancement of a trainee/cadet to the next level of a bona fide career ladder; the award of an educational benchmark for the attainment of a Certified Public Accountant License or higher level professional certification; the immediate replacement of a departing employee with an employee from within state service at a salary level of the departing employee or the FY2014 promotional formula, whichever is less; the emergency appointment of nurses, pharmacists or other health care and child protection professionals at a salary to be determined by the State Personnel Board or any other requested action of the agency that has been specifically authorized by the Legislature."

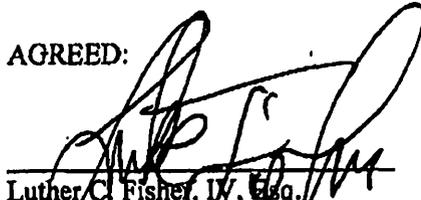
IT IS FURTHER ORDERED, that the Mississippi Department of Wildlife, Fisheries and Parks is hereby authorized to take all necessary actions and make such requests as needed to effect the payment of back pay and benefits to Jason T. Kerr, as a Conservation Officer II, from the dates of June 9, 2012, to November 30, 2012, and as a Conservation Officer III, from December 1 to December 17, 2012.

SO ORDERED, this the 17 day of December, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

  
MICHAEL N. WATTS  
Presiding Hearing Officer

AGREED:

  
Luther C. Fisher, IV, Esq.  
Counsel for Jason T. Kerr

  
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Special Assistant Attorney General  
Counsel for the MS Department of  
Wildlife, Fisheries, and Parks

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