

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

JAMES DAMPEER

**FILED**

APPELLANT

VS.

MAY 22 2014

NO.14-010

MISSISSIPPI DEPARTMENT OF  
CORRECTIONS

EMPLOYEE APPEALS BOARD

APPELLEE

ORDER

This cause came on for hearing on April 22, 2014, in Jackson, Mississippi. The Appellant, James Dampeer, appeared pro se, and David Scott represented the Mississippi Department of Corrections ("MDOC").

SUMMARY

James Dampeer was employed by MDOC as a Correctional Officer I, at the Simpson County Community Work Center (Simpson County CWC), a MDOC facility. On February 21, 2014, Dampeer was terminated from his employment with MDOC. The notice of termination states that Dampeer was terminated for a Group Two, No. 1 offense of "Insubordination, including but not limited to . . . failure or refusal to follow supervisor's instruction, perform assigned work , or otherwise comply with applicable established written policy." The termination notice also cites Dampeer for a Group Three, No. 18 offense-- "A breach of agency security or confidentiality." Specifically, MDOC alleged as follows:

. . . on October 2, 2013 at 0015 hours, CCD Ken Valentine conducted an announced (sic) security check at the Simpson County CWC. He discovered that all exterior doors were unsecured. You (Dampeer) were on tower and CO IV Owens was in the dining hall

watching television. During a staff meeting held on September 30, 2013, Commander Smith and Lt. Hubbard verbally instructed all officers as to how to use the security doors. Further, Commander Smith worked the night shift with you and Officer Owens. At this time you received instructions on how to conduct security rounds which included directives on how to use the security doors.

This Tribunal finds that, at the time of this incident, Dampeer was under the control of his immediate supervisor and was following his instructions; therefore, Dampeer did not commit the Group Two No.1 Offense of insubordination, or the Group Three No. 18 Offense of breach of agency security as charged. Consequently, Dampeer's termination is reversed and he is reinstated to his position as Correctional Officer I, with all attendant back pay and benefits.

### **FINDINGS**

On October 1 and 2, 2013, Ken Valentine Community Corrections Director at MDOC conducted an unannounced visit to the Simpson County CWC. Initially, Valentine sat in his car and observed the facility. Valentine did not see any movement and did not observe anyone conducting rounds. At 12:15 a.m., on October 2, 2013, Valentine went to exterior door five, of the facility, and tested it to see if it was locked. Exterior door five was unlocked. Valentine entered the Simpson County CWC and saw Dampeer sitting in the tower and Dampeer's supervisor, Officer Owens, sitting in the television room. Officer Owens had opened exterior door five and left it open. There was an issue of fact as to whether all of the exterior doors were unlocked, but both Dampeer and Valentine acknowledged that exterior door five was unlocked.

Dampeer and Owens were unable to communicate while Owens was outside doing rounds because the radios at the facility were inoperable. At the time that Valentine conducted this unannounced security check the security doors were relatively new and had only been in use for about one month. Dampeer had previously complained to Captain Smith, his and Owens' supervisor, that Owens was leaving the doors open in violation of policy and instructions. Prior to his termination Dampeer had not been counseled with regard to the door policy.

Although Owens did not testify at the hearing, a signed statement from him, prepared during an administrative investigation into the incident was admitted into evidence. Owens stated that "I had 1 door open to the outside to do my perimeter checks . . ." Dampeer also provided an unsigned statement from Owens in which he acknowledged that he left exterior door five open and stated that he took full responsibility for the opening of the doors.

### **OPINION**

MEAB Rule XX provides that "[a]n appealing party shall have the burden of proving that the reasons stated in the notice of the agency's final decision are not true or are not sufficient grounds for the action taken."

Dampeer met his burden of proof.

Dampeer proved that the reasons stated in the notice of the agency's final decision were not sufficient grounds for the action taken. The Dampeer v. MDOC, 14-010

radios at the Simpson County CWC were not operable. There was no way for Dampeer and his supervisor, Owens, to communicate, while Owens was outside, without the radios. Owens was Dampeer's supervisor required Dampeer to leave the security door open even when Dampeer did not want to. While there is no doubt that Dampeer knew that door five was unsecured, there was no evidence that he deliberately resisted management directives or failed or refused to follow supervisor's instructions or otherwise comply with applicable established written policy.

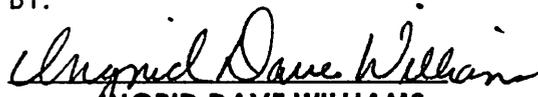
Additionally, while keeping door five open constituted a breach of agency security, under the circumstances, Dampeer should not be held accountable for that breach.

For the foregoing reasons this tribunal orders that Dampeer's termination from MDOC be reversed and Dampeer be reinstated to his previous position as CO I. Dampeer is awarded back pay and all attendant employee rights and benefits are restored.

**SO ORDERED THIS THE 22nd DAY OF May, 2014.**

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY:

  
**INGRID DAVE WILLIAMS**  
Hearing Officer