

**FILED**  
**APR 21 2014**

**EMPLOYEE APPEALS BOARD**

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**SHARON PAIGE**

**APPELLANT**

**vs.**

**NO. 13-046**

**MISSISSIPPI DEPARTMENT OF CORRECTIONS**

**APPELLEE**

**ORDER OF EAB BOARD, *EN BANC***

Before the Mississippi Employee Appeals Board (MEAB), *en banc*, is the appeal of Sharon Paige (hereafter "Paige") from the January 24, 2014, Order of Hearing Officer Ingrid Dave Williams ruling against Paige on her appeal.

**FACTS**

Sharon Paige was a Deputy Warden at the MDOC Central Mississippi Correctional Facility. On August 6, 2013, Paige resigned from her position. On August 15, 2013, Paige filed an appeal with the Mississippi Employee Appeals Board alleging that she had been forced to resign because of her sexual orientation. An appeal hearing was held on November 14, 2013, before Mississippi Employee Appeals Board Chief Hearing Officer Ingrid Williams. At the hearing, Paige also asserted that she had been discriminated against on the basis of her sex [gender]. Paige was a non-state service employee at the time she resigned. Hearing Officer Williams ruled against Paige on her appeal. The basis for Hearing Officer Williams' decision was that Mississippi does not recognize sexual orientation as a ground of discrimination and on the ground Paige did not provide sufficient evidence of sex discrimination. Aggrieved by the January 24, 2014, Order, Paige appealed to the Full Employee Appeals Board.

Paige, in her appeal to the Mississippi Employee Appeals Board, alleged that although she resigned from her position as Deputy Warden at MDOC Central Mississippi Correctional Facility,

her resignation was because she was discriminated against because of her sexual orientation. (Emphasis added) Paige did not allege in her initial filing of her appeal, that she was forced to resign because of sex discrimination. Rule III of the *Mississippi State Personnel Board Policy and Procedures Manual* provides that a non-state service employee, such as Paige, may appeal alleged acts of discrimination based on “race, color, religion, national origin, sex, age, disability, creed, physical handicap, genetic information or political affiliation.” *See, Mississippi State Personnel Board Policy and Procedures Manual*, Rule III. Rule III of the MEAB does not provide a basis for appeal of discrimination on the ground of sexual orientation.

Accordingly, Paige’s alleged discrimination on the basis of sexual orientation fails to state a cognizable ground of discrimination and her appeal of alleged discrimination based on sexual orientation fails as a matter of law. Hearing Officer Williams’ ruling was correct on that issue and it is affirmed by the Mississippi Employee Appeals Board, *en banc*.

Paige’s second ground of alleged discrimination is her allegation that she was discriminated against because of her sex and as a result she resigned. Rule III of the Mississippi Employee Appeals Board provides that discrimination based on sex is prohibited. Sex discrimination is a viable claim and may be a basis to reinstate a terminated non-state service employee, provided that the non-state service employee meets her burden of proof that her sex was a cause of her termination.

#### **CONCLUSIONS OF LAW**

As the Appellant and employee, Paige has the burden of proof/persuasion that the allegations upon which her alleged force resignation was based are either (1) untrue or, (2) if true, the actions taken by the MDOC in terminating her were not justified for the conduct that she 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.

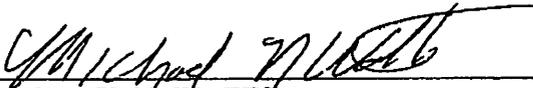
Hearing Officer Williams found as a fact that Paige failed to meet her burden of proof that her termination [forced resignation] was because of Paige's sex. So long as there are sufficient and credible facts to support a hearing officer's factual finding, it will not be disturbed on appeal. *See, generally, Childs v. Hancock County Board of Supervisors*, 1 So. 3d 855, 861 (Miss. 2009), *Mississippi Board of Veterinary Medicine v. Geotes*, 770 So. 2d 940 (Miss. 2000).

In the present case, there is sufficient credible evidence to support Hearing Officer Williams' factual finding that Paige did not meet her burden of proof that sex was a basis for Paige's alleged forced resignation. Accordingly, Hearing Officer Williams' finding that Paige failed to meet her burden of proof that sex discrimination was a cause of her forced resignation is affirmed.

Based on the reasons set forth in this opinion, the Mississippi Employee Appeals Board, *en banc*, finds that Hearing Officer Williams' January 24, 2014, Order and ruling is correct in all respects and Paige's appeal is dismissed, with prejudice.

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

MISSISSIPPI EMPLOYEE APPEALS BOARD,  
*En Banc*

  
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MICHAEL N. WATTS,  
For the Employee Appeals Board, *En Banc*