

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

SHERRY HEARN

VS.

MISSISSIPPI DEPARTMENT OF CORRECTIONS

FILED

JUL 15 2014

EMPLOYEE APPEALS BOARD

APPELLANT

NO. 13-072

APPELLEE

ORDER OF EAB BOARD, *EN BANC*

Before the Mississippi Employee Appeals Board (MEAB), *en banc*, is the appeal of the Mississippi Department of Corrections to the Order entered by Hearing Officer Ingrid Williams on May 7, 2014. The Mississippi Employees Appeal Board, *en banc*, has reviewed the brief of the Mississippi Department of Corrections, Ms. Hearn's response thereto, and the record in this matter. The Mississippi Employees Appeal Board, *en banc*, after having considered all the above items reverses Hearing Officer Williams' May 7, 2014, Order and the Mississippi Employee Appeals Board, *en banc*, reinstates Ms. Hearn's termination from the Mississippi Department of Corrections. The reasons for The Mississippi Employees Appeal Board's, *en banc*, opinion is set forth below.

FACTS

Sherry Hearn was employed as a Commander at the Forrest County Community Work Center ("Forrest County CWC") a MDOC facility. On October 20, 2012, two inmates escaped from the Forrest County CWC. Following the escape the two correctional officers who were working at the Forrest County CWC, John McDaniel and Barbara Thompson, were terminated. Hearn was their supervisor. McDaniel and Thompson appealed their termination to the Mississippi Employee Appeals Board (*John Paul McDaniel and Barbara Thompson v. MDOC, Docket No. 13-021, 13-022*). At the McDaniel/Thompson hearing, Hearn testified on behalf of McDaniel and Thompson. During the

McDaniel/Thompson hearing, Hearn admitted that she did not require McDaniel and Thompson to follow MDOC SOP 16.06.01.

On December 6, 2013, Hearn was terminated from MDOC for a Group Three, No. 18 offense of "breach of agency security or confidentiality."

Specifically during the Employee Appeals Board Hearings for former Correctional Officers Barbara Thompson and John McDaniel on June 4, 2013 and July 2, 2013 you were a witness. At those hearings, you verbally acknowledged that you allowed the officers to violate MDOC SOP 16.06.01 entitled 'Offender Count and Movement'. They failed to ensure that all necessary offender head counts were properly conducted at the Forrest County CWC on October 20, 2012. The violation of the aforementioned SOP resulting in offenders escaping the Forrest County CWC was a breach of security.

On December 19, 2013, Hearn filed a notice of appeal of her termination with MEAB. On February 19, 2014, Hearn's appeal was heard.

At the February 19, 2014, appeal hearing, it was stipulated by both Hearn and the MDOC that the record in the *McDaniel* and *Thompson* case was to be admitted into the record for Hearn's appeal and that all evidence in the *Hearn/Thompson* case could be considered by Hearing Officer Ingrid Williams. In reaching her decision on Hearn's appeal, Hearing Officer Williams subsequently entered an Order reversing Hearn's termination. Hearing Officer Williams, in her May 7, 2014, Order, stated the following findings of facts and conclusions:

MDOC SOP Number 16-06-01 specifies the policy for Offender Count and Movement at Community Correction Centers. The policy states as follows:

Formal Counts are official counts conducted by staff within the center at least every hour . . . The facility has a system of physically counting offenders. There are at least three offender counts daily . . . All offenders in the center will be counted simultaneously, each at a specific location . . . A minimum of two (2) staff members is required to a make a correct count. One staff member will count, using the recount roster, while the other observes and ensures that there is no

movement. The counting officers will remain in the area counted until the count is verified and correct.

Both McDaniel and Thompson verified that, as a matter of practice, a formal count was conducted by making the inmates get on their beds and counting them - the inmates are not actually matched to the inmate roster, they are merely counted. Both McDaniel and Thompson testified that they had been allowed to conduct formal counts in this manner, that their supervisor was aware that they conducted formal counts in this manner, and that they had never been counseled or told to conduct formal counts in any other manner. Their supervisor, Commander Sherry Hearn, verified that she was aware that formal counts were not conducted every hour as prescribed by MDOC SOP Number 16-06-01. Hearn also testified that as a matter of practice it was customary to simply reconcile the count sheets to substitute for the formal counts. Hearn stated that the count sheets were only used when the certified counts were conducted, three times daily. Hearn was aware that physical counts as prescribed by MDOC SOP Number 16-06-01 were only conducted three times a day. Hearn stated that daily activities at the FCCWC were not disrupted for formal counts, but that the correctional officers were expected to keep up with all offender movement.

The FCCWC has two zones, A zone and B zone which are separated by a corridor. Based on testimony from McDaniel, Thompson, and their immediate supervisor, Commander Hearn, a 24 year employee of MDOC, it is extremely difficult if not impossible to ensure that all inmates are counted simultaneously, with no movement, by only two officers. In order to properly count all of the inmates "simultaneously" in the manner described by MDOC policy at least three officers would be required.

Hearing Officer Williams further stated in her May 7, 2014, Order that 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." MDOC charged Hearn with "[a] breach of agency security and confidentiality," in that she allowed Thompson and McDaniel to violate MDOC SOP 16.06.01 which led to McDaniel and Thompson failing to ensure that all necessary offender head counts were properly conducted on October 20, 2012, resulting in the offenders escaping the Forrest County CWC. At the McDaniel/Thompson hearing, this tribunal found that Hearn knew that McDaniel and Thompson were not conducting

offender counts as prescribed by MDOC SOP 16.06.01. (*Emphasis added*) This tribunal also found that "it is extremely difficult if not impossible to ensure that all inmates are counted simultaneously, with no movement, by only two officers. In order to properly count all of the inmates 'simultaneously' in the manner described by MDOC policy at least three officers would be required." Additionally, this tribunal found that there "was no evidence that McDaniel/Thompson did or failed to do anything that contributed to the actual inmate escape." This tribunal finds that Hearn failed to enforce MDOC SOP 16.06.01 as written, but that the policy was difficult to enforce at the Forrest County CWC. This tribunal also finds that the failure to enforce that policy did not result in the offender escape. Under these circumstances, this tribunal concludes that the failure to enforce MDOC SOP 16.06.01 did not lead to a breach of security.

While Hearing Officer Williams found that Hearn's conduct in not requiring McDaniel/Thompson to follow MDOC SOP 16.06.01, as written, did not result in escape of the two offenders, she failed to address whether Hearn's admitted failure to require that MDOC SOP 16.06.01 be followed, in and of itself, constituted a breach of security as alleged by the MDOC. MEAB, *en banc*, finds that such failure by Hearn does constitute a breach of security and constituted the Group Three, No. 18 offense of breach of agency security within the meaning of the Mississippi State Personnel Board Procedural Manual. This is so whether the inmates escaped or not.

While Hearn contends that failure to follow MDOC SOP 16.06.01 was a common practice at the Forrest County CWC, and that counts had always been done the way she instructed and allowed McDaniel/Thompson to perform the count, that is no defense to Hearn's actions. An employee cannot ignore standard operating procedures and engage in alternative procedures because it has "always been done that way." Otherwise, any or all State employees could substitute their

subjective thoughts of what should, or could be done, for policies that were made “standard operating procedure” for a reason.<sup>1</sup>

Hearn had been a Commander at Forrest County CWC for many years. The record is devoid of any evidence that Hearn, prior to the incident involving McDaniel/Thompson, had written her supervisor or anyone at the MDOC to voice her concern that MDOC SOP 16.06.01 was inadequate, ill advised, or difficult to follow. Hearn’s complaint of such problem after she, McDaniel and Thompson were charged with breaching MDOC SOP 16.06.01 are insufficient to meet her burden of proof that she should not have been terminated because SOP 16.06.01 was difficult to follow. Had following MDOC SOP 16.06.01 truly been a problem for Hearn, she should have taken steps to address those issues before being disciplined for not following SOP 16.06.01.

In summary, Hearing Officer Williams was correct in her findings that Hearn failed to follow MDOC SOP 16.06.01. Hearing Officer Williams was also correct that such failure was not the cause of the two offenders escaping from the Forrest County CWC. However, Hearing Officer Williams failed to consider whether Hearn’s failure to follow MDOC 16.06.01, in and of itself, without regard to the inmates’ escape constituted a breach of security. The MEAB, *en banc*, holds that Hearn’s failure to follow MDOC SOP 16.06.01 or to otherwise take appropriate steps to inform her supervisors of any alleged difficulties in following SOP 16.06.01, constitutes a breach of security with the meaning of No. 18 of the Group Three offense category of the Mississippi State Personnel Board Procedural Manual. For this reason, Hearing Officer Williams’ May 7, 2014 Order is reversed. The Mississippi Department of Corrections’ termination of Sherry Hearn is reinstated.

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<sup>1</sup>This is not a situation where Hearn was required to make a sudden, or unanticipated, judgment decision on a matter where discretion by Hearn may have been appropriate.

SO ORDERED, on this the 14<sup>th</sup> day of July, 2014.

Michael N. Watts

MICHAEL N. WATTS  
For the Mississippi Employees  
Appeals Board, *en banc*