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**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

<b>LAKEISHA WALKER</b>	<b>FILED</b>	<b>APPELLANT</b>
<b>VS.</b>	<b>DEC 15 2014</b>	<b>DOCKET NO. 14-034</b>
<b>MISSISSIPPI DEPARTMENT OF CORRECTIONS</b>	<b>EMPLOYEE APPEALS BOARD</b>	<b>RESPONDENT</b>

**ORDER**

Before the Mississippi Employee Appeals Board is the appeal of Lakeisha Walker (“Walker” or “Appellant”) for her demotion from Correctional Supervisor (Lieutenant) to Correctional Officer III effective August 1, 2014, by the Mississippi Department of Corrections (“MDOC”). Specifically, by letter dated July 9, 2014, Earnest Lee, Superintendent of the Mississippi State Penitentiary, demoted Walker for the following reasons:

1. You submitted doctor’s excuses from [REDACTED] Dentist Office in Cleveland, Mississippi to the Personnel Department and/or Area II Shift Commander dated March 28, 2014 and April 24, 2014, excusing you from work. The excuses were faxed to Ms. Peggy McClesse, Officer Manager for Dr. [REDACTED] office, for her review. Ms. McClesse informed Ms. Arleatha Williams, Personnel Officer that the excuses did not come from Dr. [REDACTED] office and that all of Dr. [REDACTED] excuses are computer generated, not hand written. Ms. McClesse further stated that you had not been seen in the Dr. Office since March 14, 2006.

Falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official state documents is a violation of Subparagraph Number 6 of Appendix III (Third Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated July 2013.

Mississippi State Employee’s Handbook, July 2013 edition, states that the commission of one Group III Offense may be disciplined by the agency with a written reprimand and/or may result in suspension without pay for up to thirty working days, demotion, or dismissal.

A hearing was held on Walker's appeal on October 17, 2014. During the October 17, 2014, hearing, exhibits were introduced into evidence and testimony was taken of witnesses. Walker was represented by Ellis Pittman and the MDOC was represented by David K. Scott.

Walker had the burden of proof at her appeal hearing. *See, Mississippi State Personnel Board Policy and Procedures Manual*, effective date 7/1/2014, Chapter 10, Section 20(B). Also, *see Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999). In *Richmond* 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.

Specifically, to prevail on her appeal, Walker must prove "... 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." *See, Mississippi State Personnel Board Policy and Procedures Manual*, effective date 7/1/2014, Chapter 10, Section 20(B).

This tribunal, having considered all exhibits entered into evidence, the testimony of all witnesses, and having judged all witnesses' credibility, finds as a fact that Walker failed to meet her burden of proof that the allegations in her July 9, 2014, demotion letter that she had provided false "... records, such as, but not limited to vouchers, reports, time records, leave records, employment applications, or other official state documents is a violation of Subparagraph Number 6 of Appendix

III (Third Group Offense) as outlined in the *State Personnel Board Manual of Policies, Rules and Regulations updated July 2013* were untrue. Further, this tribunal finds as a fact that Walker also failed to meet her burden of proof that the actions taken by the MDOC in demoting her from Correctional Supervisor (Lieutenant) to Correctional Officer III was too severe a punishment for the conduct in which she engaged. The reasons for this tribunal's findings are set forth below.

At Walker's appeal hearing, Walker initially admitted during her questioning by the MDOC's attorney that the allegation in her July 9, 2014, demotion letter that she submitted false doctor's excuses from Dr. [REDACTED] office to the Mississippi State Penitentiary Personnel Department and/or Area II Shift Commander was true. Walker stated during her questioning by the MDOC's counsel that even though her submitted excuses were false, that she was appealing her demotion from Correctional Supervisor to Correctional Officer III because the punishment was too severe. However, during Walker's attorney's questioning of Walker, she testified contrary to what she had stated on cross-examination by the attorney for the MDOC. When Walker's attorney questioned her, Walker stated that she was treated by Dr. [REDACTED] on March 28, 2014 and April 24, 2014. Because Walker's testimony, when questioned by her attorney, was contrary to what she had admitted on cross-examination by the MDOC's attorney, the undersigned hearing officer directed that the record in this matter remain open for an additional thirty days from October 17, 2014, to provide Walker time to obtain her medical records from Dr. [REDACTED] office confirming that she had, in fact, received treatment from him on March 28, 2014, and April 24, 2014. Walker was advised that the Mississippi Employee Appeals Board would, upon her request, issue a Subpoena Duces Tecum to Dr. [REDACTED] office if Walker needed assistance in obtaining her records.

At the expiration of the thirty days from October 17, 2014, no request was made by Walker for the MEAB to issue a Subpoena Duces Tecum for Dr. [REDACTED] records. Further, there were no records from Dr. [REDACTED] office produced by Walker during the additional thirty day time period that was provided to Walker for her to obtain the records confirming her testimony. Because Walker had the burden of proof to prove that the allegations that she submitted falsified medical records from Dr. [REDACTED] office to the Mississippi State Penitentiary Personnel Department and/or her Area II Shift Commander were untrue and she failed to produce documents which would have confirmed that she had in fact been under Dr. [REDACTED] care on March 28, 2014, and April 24, 2014, this tribunal finds as a fact that Walker failed to meet her burden of proof on that issue. Likewise, this tribunal also finds as a fact that Walker submitted false documents to the MDOC/Mississippi State Penitentiary.

The only remaining issue is whether Walker's demotion from Correctional Supervisor to Correctional Officer III was too severe a punishment for the conduct for which Walker engaged in.

This tribunal finds that Walker's demotion from Correctional Supervisor (Lieutenant) to Correctional Officer III was not too severe a disciplinary punishment by the MDOC. This is so because the MDOC could have terminated Walker for her conduct. Walker's conduct constituted falsification of records within the meaning of Subparagraph Number 6 of Appendix III as outlined in the *State Personnel Board Manual of Policies, Rules and Regulations updated July 2013*.

*The Mississippi State Employees Handbook* states that the commission of one Group Three Offense may be disciplined by the agency with a written reprimand and/or may result in suspension without pay for up to thirty working days, demotion or dismissal. Here, while the MDOC could have

terminated Walker it did not do so, but limited its punishment to demoting her from Correctional Supervisor to Correctional Officer III.

At her appeal hearing, Walker contended that a number of other MDOC employees had also submitted false doctor's excuses and none of them had been terminated. The MDOC did not deny that certain MDOC employees had also submitted false excuses or altered doctor's excuses. In fact, the MDOC introduced into evidence, Exhibit 7, a list of thirteen (13) employees who had provided false or altered medical excuses to the MDOC. Of those 13 employees, the only state service employee who was terminated was Shameka Sutton. Other state service employees received suspensions from between three days up to ten days. Walker contends that this supports her position that her reduction in rank was too severe.

Walker's argument is without merit. Walker was promoted to Correctional Supervisor on September 1, 2013. Walker's submission of false doctor excuses were dated March 28, 2014, and April 24, 2014, months after she was promoted to the rank of Correctional Supervisor (Lieutenant). As a Correctional Supervisor (Lieutenant), Walker supervised a number of subordinates. Clearly, the MDOC does not expect its supervisors to falsify documents, or through his or her actions, to convey to his or her subordinates that it is appropriate to submit falsified documents to the MDOC or to otherwise engage in the conduct Walker engaged in. Further, Walker submitted two false records – March 28, 2014, and April 24, 2014. Walker did not prove at her appeal hearing that any of the other employees who were not terminated had two or more incidents of falsification, as opposed to only one incident.

In summary, this tribunal finds as a fact that the MDOC acted within the Mississippi Personnel Board Procedural Manuals in all respects, including in its decision to demote Walker from

Correctional Supervisor to Correctional Officer III. For the foregoing reasons, Walker's demotion from Correctional Supervisor to Correctional Officer III effective August 1, 2014, is affirmed. Walker's appeal is dismissed, with prejudice.

SO ORDERED, THIS THE 15<sup>th</sup> DAY OF DECEMBER, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:



MICHAEL N. WATTS  
Presiding Hearing Officer