

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

LAMARCUUS BUCKNER

FILED

APPELLANT

JAN 20 2015

VS.

DOCKET NO. 14-051

EMPLOYEE APPEALS BOARD

MISSISSIPPI DEPARTMENT OF CORRECTIONS

RESPONDENT

ORDER

Before the Mississippi Employee Appeals Board is the appeal of LaMarcus Buckner ("Buckner" or "Appellant") for his termination by the Mississippi Department of Corrections ("MDOC") effective October 1, 2014.

Buckner, a black male, began his employment with the MDOC on February 3, 2014. By letter dated October 1, 2014, Jerry Williams, Deputy Commissioner, terminated Buckner from his employment with the MDOC effective October 1, 2014. Williams was a superior of Buckner. Williams is a black male. At the time of Buckner's termination, Buckner had not successfully worked with the MDOC or any other state agency for twelve months. Thus, Buckner, on the date of his termination, was a probationary employee. *See Mississippi State Employee Handbook* Sections 7.3 and 8.1. Under the MEAB rules, probationary employees can be dismissed from employment for any reason, or no reason, so long as the termination is not for a discriminatory reason.

Specifically, Section 8.1 of the *Mississippi State Employee Handbook* provides that a probationary employee, such as Buckner, may only grieve acts of discrimination based on political affiliation, race, color, handicap, genetic information, national origin, sex, religion, creed, age or disability.

A hearing was held on Buckner's appeal on December 19, 2014. During the December 19, 2014, hearing, exhibits were introduced into evidence and testimony was taken of witnesses. Buckner represented himself. The MDOC was represented by David K. Scott.

Buckner had the burden of proof at his 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 his appeal Buckner, because he was a probationary employee, must prove that he was terminated for a discriminatory reason.

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 Buckner failed to meet his burden of proof that his termination occurred in whole, or in part, because of a discriminatory reason.

Buckner, in his MEAB appeal notice, alleged sexual orientation and sexual discrimination as reasons for his termination from his position of Field Worker with the MDOC. Buckner did not, in his notice of appeal to the MEAB, or in his charge of discrimination filed with the EEOC (a copy

of which was included as an exhibit within his MEAB appeal) allege he was the recipient of discrimination based on either “political affiliation, race, color, handicap, genetic information, religion, national origin, religious creed, age or disability.” See, Section 8.1 of the *Mississippi State Employee Handbook*. At Buckner’s appeal hearing, for the first time Buckner raised an allegation that race was a factor in his termination.¹

Sexual orientation is not a recognized protected class within the *Mississippi State Employee Handbook*. See Sections 8.1 and 8.2(D) of the *Mississippi State Employee Handbook*. Nor did this tribunal, in its research of the law, find any controlling authority under Mississippi law or federal law which holds that a person’s sexual orientation may be a cognizable basis for a discriminatory employment claim. See, *Doe v. Browngreer PLC*, 2014 WL 4404033 (E.D. LA. 2014). For these reasons, Buckner’s appeal on the basis of sexual orientation is dismissed, as a matter of law.

The next issue is whether Buckner was denied the Field Officer position because of sex discrimination or race discrimination. This tribunal, having considered all the evidence, both oral and documentary, finds as a fact that Buckner failed to meet his burden of proof that his initial employment as a Field Worker, as opposed to his sought employment as a Field Officer, was based in whole, or in part, on the fact that Buckner was a male, Buckner’s race, or sexual preference. This tribunal also finds as a fact that Buckner’s termination from his position as a Field Worker was not based in whole, or in part, on the fact that he was a male or because of his race. This is so for the following reasons.

¹The issue of race discrimination by Buckner was first alleged by Buckner at his appeal hearing. This tribunal allowed evidence on that issue and in this Opinion also considered whether Buckner was terminated in whole, or in part, because of his race. For the reasons set forth in this Opinion, this tribunal finds as a fact that race was not a factor in whole, or in part, in MDOC’s termination of Buckner.

Buckner initially applied for the position of Field Officer, not the Field Worker job he was ultimately provided. Buckner contends that he was denied the Field Officer job even though he was qualified for the Field Officer job. The MDOC Classification Department did not believe Buckner was qualified for the Field Officer position because in the MDOC's Classification Department's view, Buckner did not meet the law enforcement training requirement to hold the Field Officer position.

The testimony at Buckner's appeal hearing established that Buckner was qualified for the position of Field Officer on the day he applied for it. In fact, MDOC's counsel stipulated at the appeal hearing that Buckner met the qualifications of Field Officer at the time he applied for employment. Although the evidence at the appeal hearing established Buckner's qualifications for the Field Officer position when he applied, the evidence also clearly established that Buckner's failure to be considered for the Field Officer position was because of misinterpretations and misunderstanding by the MDOC's Classification Department – not because of Buckner's race, sexual orientation, or because he was a male. Buckner's failure to be approved for consideration of the Field Officer position was because of honest mistakes made at the administrative level of the MDOC classifications. Buckner failed to meet his burden of proof that discrimination, of any type, was a reason why MDOC's Classification Department failed to qualify Buckner for the Field Officer position. Therefore, that claim of Buckner is dismissed, with prejudice.

The next issue is whether Buckner met his burden of proof that he was terminated from his position as Field Worker in whole, or in part, because of his sex. From the evidence, this tribunal finds as a fact that Buckner's termination from the MDOC was not caused, in whole or in part, because of sexual discrimination against him.

At Buckner's appeal hearing, Buckner and Deputy Commissioner Jerry Williams testified, as did Lee McTeer. A number of other witnesses testified at Buckner's appeal hearing in addition to Buckner, McTeer, and Williams. The testimony of the other witnesses was considered by this tribunal in reaching its decision in this matter.

McTeer was Buckner's immediate supervisor. McTeer is a white male. Williams is the Deputy Commissioner of the MDOC. Williams is a black male. The testimony of Buckner, Williams and McTeer, and the exhibits introduced into evidence, established that significant personality conflicts existed between McTeer and Buckner and Williams and Buckner. The primary, if not sole, reason for this conflict arose because Buckner made complaints about a number of things and his belief he did not receive proper consideration by his superiors of his complaints. For example, Buckner alleged breach of Buckner's privacy, favoritism to employees other than Buckner who were charged with violations of Group III offenses,² and breach of alleged confidentiality

²Buckner was charged with the Group Three, Number 14 offense as defined in the 2014 *Mississippi State Employee Handbook* which states "an act or acts of conduct occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public or to other State employees." The basis for the MDOC's charge against Buckner for the alleged violation of a Group Three, Number 14 offense was an incident that occurred at approximately 9:00 p.m. on July 7, 2014. The facts surrounding this incident are set forth in Exhibit 5 of the record. Based on the incident between Buckner and his boyfriend, Torry, the MDOC charged Buckner with the Group Three, Number 14 offense. This tribunal finds as a fact that the incident between Buckner and his boyfriend was not a Group Three, Number 14 violation as charged by MDOC. This is because Buckner met his burden of proof that the incident occurred off duty, did not implicate the use or involvement of State property and was limited to a verbal disagreement between Buckner and Torry. The facts do not support that Buckner and Torry's verbal disagreement was "an act or acts of conduct occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public or to other State employees." However, the fact that this tribunal reverses the Group Three offense against Buckner does not mean that Buckner's termination was inappropriate. As discussed, *infra*, because Buckner was a probationary employee he could be terminated for any reason, or no reason, so long as he was not the recipient of cognizable discrimination.

between Buckner and his superior. It is difficult to summarize in this Order all of Buckner's complaints, his superior's responses thereto, the ultimate disposition of each and the reasons for the ultimate dispositions.³ However, it was clear to this tribunal from the demeanor of Buckner, McTeer and Williams that personality conflicts existed between Williams and Buckner and Buckner and McTeer. For example, Buckner met with Williams and McTeer in Jackson in September, 2014, for Williams and McTeer to terminate Buckner. After the meeting, Buckner accused McTeer of assault and battery, and had a warrant issued for McTeer's arrest even though the testimony at the appeal hearing established that any touching of Buckner by McTeer was limited to McTeer brushing against Buckner's clothes as they walked past each other prior to the beginning of the meeting. Further, the demeanor of Buckner, Williams and McTeer at Buckner's appeal hearing clearly conveyed significant personality conflicts between Buckner and Williams and Williams and Buckner.

The conflict between Buckner and McTeer and between Buckner and Williams was not, though, in whole, or in part, based on Buckner's sex or race. As noted earlier, Jerry Williams is a black male. Mr. Williams was, and is, the Deputy Commissioner of the MDOC. While McTeer, a white male, was Buckner's immediate supervisor, the evidence confirms that Williams – the person who terminated Buckner and authorized Buckner's termination letter – had sufficient complaints about Buckner and interaction with Buckner, to make an informed decision of whether Buckner, as a probationary employee, should be terminated or remain employed by the MDOC. The inference this tribunal – as the fact finder – draws from the evidence, is that Deputy Commissioner Williams

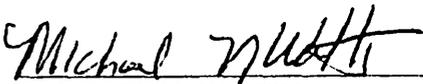
³Attached to Buckner's MEAB appeal form are exhibits which memorialize a number of Buckner's complaints. These exhibits consist of a letter from Buckner to Kenneth Fox dated September 17, 2014, a letter from Buckner to Deputy Commissioner Jerry Williams dated September 17, 2014, and a second letter to Deputy Commissioner Jerry Williams also dated September 17, 2014.

and McTeer perceived Buckner as an employee who caused undue stress to MDOC and made unfounded complaints about a number of issues. McTeer and Williams perceived Buckner as a disgruntled person who needlessly "rocked the boat." Williams and McTeer made the decision to terminate Buckner while he was a probationary employee. So long as Buckner's termination was for a non-discriminatory reason – as this tribunal has found occurred – Buckner's termination was appropriate.

In summary, this tribunal finds as a fact that Buckner's termination from his MDOC employment was not based in whole, or in part, on Buckner's gender, race or sexual orientation, or any other discriminatory reason, i.e., political affiliation, race, color, handicap, genetic information, national origin, sex, religion, creed, age or disability as prohibited by the *Mississippi State Employee Handbook* or federal law. Buckner's termination is affirmed and his appeal is dismissed, with prejudice.

SO ORDERED, THIS THE 19th DAY OF JANUARY, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: 
MICHAEL N. WATTS
Presiding Hearing Officer