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**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**DONALD F. WALLIS**

**FILED**

**APPELLANT**

**VS.**

**JAN 16 2014**

**NO.13-043**

**MISSISSIPPI DEPARTMENT OF  
REVENUE**

**EMPLOYEE APPEALS BOARD**

**APPELLEE**

**ORDER**

This cause came on for hearing on September 19, 2013, in Hattiesburg, Mississippi, and October 28 and 29, 2013 in Biloxi, Mississippi. The Appellant, Donald F. Wallis, represented himself and Abigail M. Marbury represented the Mississippi Department of Revenue ("MDOR").

**SUMMARY**

Donald Wallis began employment with the MDOR as a Revenue Officer I, at The MDOR Gulf Coast District Office in Biloxi, Mississippi, on January 2, 2013. On July 24, 2013, Wallis was terminated from his position. Wallis was a probationary employee, and in his appeal he asserted that he was terminated because of his disabilities. Wallis could not prove that he was terminated due to his disabilities, therefore this matter is dismissed.

**FINDINGS**

Wallis was hired for the position of a Revenue Officer I at The MDOR Gulf Coast District Office in Biloxi, Mississippi, and began his employment on January 2, 2013. On July 24, 2013, Wallis was terminated as a probationary employee. The position of Revenue Officer is stressful because the Revenue Officers deal with the taxpaying public and must process high volumes of information

regarding the taxpayers.

In his application for the position of Revenue Officer I Wallis answered yes to the question "Are you a veteran of the Armed Forces?" Wallis also answered yes to the question "If you are a veteran, were you declared disabled?" [REDACTED]

[REDACTED] Wallis has also been treated for [REDACTED] at the Veteran's Administration Medical Center in Biloxi, Mississippi. Wallis has [REDACTED] movements unnerve him. At no time during his interview for the position of Revenue Officer I did Wallis indicate that he had a disability. Prior to Wallis' termination, no one in the MDOR Gulfport Office knew that Wallis [REDACTED].

Wallis received the MDOR Handbook, Policies, Procedures and Forms on January 2, 2013. Initially, Wallis trained for two week with fellow Revenue Officer, Tracey Jansky, and for an additional two weeks with another Revenue Officer, Sarah Ellis. During his training, Wallis told Jansky, that he [REDACTED]

[REDACTED] Jansky and Ellis accommodated Wallis' request. Ellis did not consider Wallis' problem a disability, but rather a learning style.

On January 31, 2013, Wallis got into a confrontation with a fellow employee, Julie Cerny, with regard to Cerny's interaction with a taxpayer. In an email from Mike Shelby, the MDOR Southern Region Collections Director, to Wayne Ray, MDOR Director of the Officer of Tax Enforcement, on April 16, 2013, memorializing a meeting that Shelby had with Alan Sumrall, Wallis' immediate supervisor, and other MDOR staffers, Shelby noted that they had discussed Wallis

and stated the following:

Rhonda-Don having major issues knowing how to help taxpayers

Laura- Don left early one afternoon while Alan was off

Laura- Tracey told Julie, Don has [REDACTED]

Laura- Don had 2 pm appointment with taxpayer and showed up at 2:25 for appointment

Laura-Don is abrasive with taxpayers at the front counter, defensive attitude

Laura-Tracey feels like Alan will not do anything about Don so not saying anything to Alan

In an email from Sumrall to Shelby he memorialized a meeting that he had that same day, with Wallis, in which he pointed out to Wallis the issues listed in Shelby's email.

When it became apparent that Wallis was having difficulties on the job, Jansky reported Wallis' [REDACTED] to Sumrall. Subsequently, Sumrall met with Wallis and asked him if had [REDACTED] Wallis responded to Sumrall that he had [REDACTED] [REDACTED] Wallis did not explicitly declare a disability.

In April, Sumrall spoke to Wallis and told him that his job performance "was not impressing" Sumrall. From April 22, 2013, until May 2, 2013, Wallis was sent to the Jackson, MDOR Office for additional training with MDOR employee, Charles Lockett. This additional training was unusual. Most new Revenue Officers only received the initial four weeks of on-site training. Shelby described this additional training as an effort to salvage the time which had already been invested in training Wallis.

On May 6, 2013, Katherine Hampton, Lockett's supervisor, sent Sumrall an

email stating "Don got off to a very slow start, but has made great improvement while training with Charles Lockett. Initially, Don struggled with grasping the basic functions of the work. With additional training, Charles and I think Don could become a productive RO."

Beginning in the first week of his employment Wallis had ongoing interpersonal workplace confrontations with a long time MDOR employee, Robin Simon. Wallis felt that Simon treated him poorly and believed that, on one occasion, she invaded his space in a threatening manner. Wallis believed that Simon was trying to get people to dislike him. Simon had no knowledge of Wallis'

 Wallis stated that all he wanted was to be left alone to do his job.

The majority of the Revenue Officers in the Gulf Coast District Office are located outside of their supervisor, Sumrall's office, as was Wallis, the most junior Revenue Officer. On June 19, 2013, Wallis emailed his supervisor, Sumrall, and asked him if he would be willing to "consider allowing me to move to a more quiet and less distracting (sic) area?" Wallis wanted to move to a quieter area because the area in which he was seated was noisy; he was having problems concentrating; and he wanted to be closer to his trainer. On July 17, 2013, Sumrall emailed Shelby and Ray regarding Wallis' six month evaluation and noted that Wallis was underperforming as follows:

- 1) Not Giving taxpayers deadlines for paying
- 2) Not following up with taxpayers
- 3) Not requesting liens and levies when working on an account
- 4) Not closing accounts when he has proper documentation
- 5) Not returning phone calls and responding to emails from taxpayers
- 6) Not updating accounts with information

- 7) Conflict with other DOR employees
- 8) Not following instructions in dealing with fellow DOR employees
- 9) Not following instructions from Supervisor

Wallis was involved in another confrontation with Julie Cerny and a taxpayer on July 16, 2013. On July 17, 2013, Laura Baxter, who works in the Auditing Department in the MDOR Gulf Coast District Office, sent an email to Catherine Polovich, another Auditing Department worker, stating that "I believe that the core problem for Don is his general lack of office etiquette together with a lack of people skills in general."

On July 10, 2013, Wallis met with Wayne Ray at the Gulf Coast Regional Office. During that meeting Wallis told Ray that he was going to the VA for [REDACTED]. [REDACTED] Wallis told Ray that he didn't want to start his job asking for assistance, and asked Ray not to discuss these disabilities with anyone, particularly Sumrall or Shelby unless his job was in peril. At the time of the conversation, Ray had no knowledge that Wallis was in danger of losing his job.

On July 24, 2013, Sumrall terminated Wallis for poor job performance. Sumrall was dissatisfied with Wallis' failure to appropriately communicate MDOR expectations to taxpayers, Wallis' failure to respond in a timely manner to taxpayer inquiries, and Wallis' failure to close accounts in a timely manner.

While Wallis was a student at the University of Southern Mississippi, after it became apparent that he was having difficulties in his classes, he declared a disability and asked for accommodation from the University.

Wallis was resistant to declaring that he had a disability at USM and at

MDOR. At no time while Wallis was employed at MDOR did he attempt to follow written MDOR policy for declaring a disability and requesting accommodations.

### OPINION

Because Wallis was a probationary employee he was not a state service employee, and absent a claim of discrimination he would not be entitled to appeal his termination. The Mississippi State Employee Handbook Rule 8.1 spells out the criteria for probationary employees to grieve an action as follows, "A probationary employee . . . may grieve only alleged acts of discrimination. . . ." MEAB Rule III. D. reiterates that "[a] . . . probationary employee . . . may appeal alleged acts of discrimination based on race . . . sex, age, disability. . ." Wallis' primary assertion is that he was terminated because he is disabled. Wallis also alleges that he was discriminated against on the basis of race, sex and age.

There was absolutely no evidence to indicate that Wallis was terminated due to his race, sex or age. Therefore an extensive discussion of those allegations is not warranted.

With regard to Wallis' allegation that he was terminated because of his disability, in the MDOR Employee Handbook under the heading "REASONABLE ACCOMODATION SCOPE AND PROCEDURES" the handbook states "When requested by an otherwise qualified applicant or employee with a disability to do so, the DOR is prepared to modify or adjust the job or work environment to make 'reasonable accommodation' . . ." The Handbook goes on to state as follows:

To request reasonable accommodation under this policy, an applicant/employee must submit a written statement to the ADA Coordinator which indicates the nature of the claimed physical or mental disability and identifies his or her abilities and functional limitation with respect to the claimed disability. The statement should also request reasonable accommodation or at the very least request that some adjustment or change is needed in his or her job because of limitations caused by the disability.

As stated above, at no time did Wallis follow these procedures to report that he had disabilities, or to request accommodation for those disabilities.

The remaining issue is whether Wallis' other actions, i.e. telling Sumrall and his trainers that he had [REDACTED] and that he needed [REDACTED] [REDACTED] asking for a quieter cubicle; and telling Ray that he had a disability, but requesting that he not tell anyone else was sufficient notice to MDOR that he had disabilities, and was requesting that those disabilities be accommodated.

A plaintiff in a disability discrimination case must first make out a three-factor prima facie case.

Under *McDonnell Douglas Corp v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973) Ordinarily, the plaintiff must show that he (1) is disabled within the meaning of the ADA (2) is qualified to perform the essential functions of his job with or without a reasonable accommodation; and (3) was discharged or otherwise adversely affected in whole or in part because of his disability.

*Jones v. Nationwide Life Insurance Company*, 696 F. 3d 78 (1<sup>st</sup> Cir. 2012)

In the case of *Taylor v. Principal Financial Group*, 93 F.3d 155, (5<sup>th</sup> Cir. 1996)

the Court concluded as follows:

Where the disability, resulting limitations, and necessary reasonable accommodations, are not open, obvious, and apparent, to the employer, as is often the case when mental disabilities are involved, the initial burden rests primarily upon the employee, or his health-care provider, to

specifically identify the disability and resulting limitations, and to suggest reasonable accommodations.

Assuming that Wallis is disabled within the meaning of the ADA and assuming that he is qualified to perform the essential functions of the job—neither of which we accept as actual fact— the issue remains whether Wallis was discharged because of his disability.

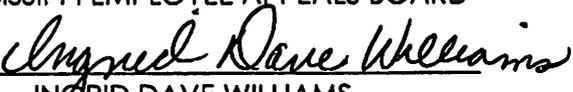
Wallis did not inform his immediate supervisor, Sumrall, the person who actually decided to terminate him, or Sumrall's supervisor, Shelby, that he had a disability. The only person Wallis told about his disability was Ray, and he asked Ray not to tell Shelby or Sumrall.

Pursuant to MDOR policy, it was Wallis' responsibility to declare to the ADA Coordinator that he had a disability, and to ask for reasonable accommodations for that disability. Wallis failed to do so. MDOR presented ample evidence that Wallis did not get along with his coworkers, and was unable to perform his job consistent with MDOR expectations. Sumrall had no reason to believe that Wallis' inability to perform was related to a disability, nor did he have an obligation to accommodate a disability of which he was unaware.

Since Wallis could not prove that he was terminated for any discriminatory reason, this matter is dismissed.

**SO ORDERED THIS THE 16<sup>th</sup> DAY OF January, 2014.**

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY:   
INGRID DAVE WILLIAMS  
Hearing Officer