

FULL BOARD OF THE MISSISSIPPI EMPLOYEE APPEALS BOARD

LAMARCUUS BUCKNER

FILED

APPELLANT

VS.

APR 06 2015

NO. 14-051

MISSISSIPPI DEPARTMENT OF CORRECTIONS EMPLOYEE APPEALS BOARD RESPONDENT

ORDER OF MEAB BOARD, EN BANC

Appellant, LaMarcus Buckner ("Buckner" or "Appellant") filed an appeal to the Mississippi Employee Appeals Board ("MEAB), *en banc*, appealing the Order entered by Hearing Officer Michael N. Watts, affirming his termination from employment with the Mississippi Department of Corrections ("MDOC"). The MEAB, *en banc*, having reviewed the record in this matter, affirms the decision of Hearing Officer Watts. The reasons for the MEAB, *en banc*, opinion are set forth below:

FACTS

Buckner began his employment position of Field Worker with the MDOC on February 3, 2014. By letter dated October 1, 2014, Jerry Williams, Deputy Commissioner and Buckner's superior, terminated Buckner from his employment with the MDOC effective October 1, 2014. On the date of his termination, Buckner was a probationary employee.

Buckner appealed his termination to the MEAB and a hearing was held on Buckner's appeal on December 19, 2014. Buckner represented himself. The MDOC was represented by David K. Scott. During the December 19, 2014, hearing, exhibits were introduced into evidence and testimony was taken of witnesses. On January 19, 2015, after considering the testimony of all the witnesses and having considered all exhibits introduced into evidence, Hearing Officer Watts found as follows:

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.

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.

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,' and breach of alleged confidentiality 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; 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 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.

On January 19, 2015, Hearing Officer Watts affirmed Buckner's termination and dismissed his appeal. Hearing Officer Watts found 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 then timely filed an appeal the MEAB Full Board.

OPINION

MEAB Rule 18 A. provides that "The purpose of the hearing is to ascertain the truth." MEAB Rule 20. B. states 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. There is no requirement that the agency support their decision to terminate an employee with "substantial evidence." The burden is on the employee to show that reasons for the agency's decision are not true or are not sufficient grounds for the action taken.

Under Chapter 2 of the Mississippi State Employee Handbook (state-employee status), every employee upon state service must complete twelve (12) months of service before they are considered as a permanent state service employee. See *Mississippi State Employee Handbook*. Chapter 2.2. During this probationary period, the employee has no property rights in their job. Moreover, they may only grieve or appeal a disciplinary action if there is a showing of an act of discrimination based on race, color, religious beliefs, national origin, sex, age, disability, and genetic information,

religious or political affiliation. See *Mississippi State Employee Handbook*. Sections 7.3 and 8.1.

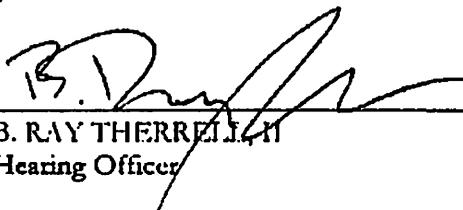
Buckner was employed and was hired with MDOC on February 3, 2014. He was terminated effective October 1, 2014. There is no dispute in the record that he was a probationary employee. Thus, to prevail on his appeal, Buckner must prove he was terminated for a discriminatory reason. Buckner makes several allegations of discrimination in his appeal. However, the MEAB, *en banc*, agrees with Hearing Officer Watts and further finds that nothing in the record shows Buckner was the recipient of any discrimination based on Buckner's race, color, religious beliefs, national origin, sex, age, disability, and genetic information, religious or political affiliation. See *Mississippi State Employee Handbook*. Sections 7.3 and 8.1.

Having carefully reviewed the testimony and evidence, the MEAB, *en banc*, hereby adopts and affirms Hearing Officer Watts' Findings of Fact and Opinion in the above styled matter. The decision of the Hearing Officer is hereby Affirmed.

SO ORDERED this the 6th day of April, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD FULL
BOARD

BY: _____


B. RAY THERRELL, II
Hearing Officer