

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

MARK PITNER

FILED

APPELLANT

VS.

MAY 15 2015

NO.14-058

MISSISSIPPI DEPARTMENT OF
PUBLIC SAFETY

EMPLOYEE APPEALS BOARD

APPELLEE

ORDER

This cause came on for hearing on April 17, 2015, in Jackson, Mississippi. The Appellant, Mark Pitner, was represented by Colby R. Langston, and Timothy Smith represented the Mississippi Department of Public Safety ("MDPS").

SUMMARY

Mark Pitner is employed as a Master Sergeant with the MDPS. On October 21, 2014, MDPS officially reprimanded Pitner. The Reprimand states that Pitner's specific offense was,

[f]ailure to fully complete required duties and follow guidelines set forth by the DPS General Order 9.14 (Traffic Collision Investigation and Reporting Policy). MSGT Pitner failed to go to the hospital after completing his on scene investigation, which ultimately led to us not finding out that the victim died until approximately 8 hrs later.

The Official Reprimand also states that Pitner was reprimanded for insubordination of a direct order because "MSGT Pitner was counseled 5 days prior on September 10, 2014, for neglecting his duties and making

other people do his job.”

This tribunal finds that the MDPS' reprimand of Pitner was supported by the evidence and that Pitner committed a Group II, No. One offense of insubordination in that he failed to follow supervisor's instruction, perform assigned work, or otherwise comply with applicable established written policy.

FINDINGS

Pitner is a Master Sergeant in MDPS District Four. In that capacity Pitner is responsible for supervising seven Troopers. Part of Pitner's job is to respond to accidents in the MDPS District Four. On September 15, 2014, there was a serious traffic accident in Tippah County, near Dumas, Mississippi. Most of the Troopers in District Four were involved in a training program at the time of the accident, and only three Troopers were available to cover District Four. Pitner was the closest, on duty Trooper, to the accident and he responded to the accident. When Pitner arrived at the scene of the accident, the accident victim was very seriously injured and was unconscious and unable to assist in the investigation in any way. The accident victim was transported to the hospital via helicopter. The accident victim's cell phone was locked and Pitner was unable to access

the phone to contact any friends or relatives to notify them of the accident, and of the transport of the accident victim to the hospital. Pitner contacted a Mississippi Bureau of Investigation Investigator, Chad Cummings, to get assistance with unlocking the accident victim's phone. Cummings could not unlock the phone but was able to obtain information about the accident victim's relatives via a driver's license database. Cummings then contacted the accident victim's father and the accident victim's mother, who was at work at the hospital to which the victim had been transported. Pitner needed additional information to complete the accident report, including information about the accident victim's insurance. Instead of going to the hospital to obtain the required information from the accident victim's family, Pitner sent another Trooper, who had not responded to the accident, to the hospital to obtain the information. While that Trooper was at the hospital the accident victim's mother requested information about the accident. The Trooper at the hospital called Pitner to get the information for the mother. At no time did Pitner speak to the accident victim's family. Pitner stated that he did not go to the hospital because he had been cautioned about the amount of

time that he had been working.

Pitner called the hospital on September 15, 2014, to find out the accident victim's status and was told that the accident victim had been released. Pitner thought it was strange that the accident victim had been released because the accident victim's injuries had been so serious. Pitner then contacted another Master Sergeant, Allen Lyles, to inquire about the status of the accident victim. Lyles told Pitner that he would take care of finding out what happened. Lyles then contacted the accident victim's family and found out that the accident victim had died at the hospital.

Major Randy Ginn, Chief Inspector for the Northern half of Mississippi, Lieutenant Captain Kevin Myers and Captain Chad Moore, Pitner's in line supervisors, testified that the Trooper investigating an accident should contact the accident victim's family for follow up, inform the victim's family about the accident, and complete investigation of the accident with the accident victim or the accident victim's family. All three of Pitner's supervising officers stated that it was Pitner's responsibility, as the responding officer to a serious accident, to work the investigation.

MDPS General Order 9.14 provides as follows:

3. Member's responsibilities if involved party is transported to a medical facility, incoherent or incapacitated: . . .
 - a. Upon arriving at the collision site, if the investigating officer finds that an involved driver . . . has been transported to a medical facility prior to his/her arrival, the investigating officer shall respond to that medical facility upon completing his/her on scene investigation. . .
 - b. In the event the involved driver, pedestrian, bicyclist, or train engineer is incoherent and/or incapacitated, the investigating officer shall return to the medical facility the following day to conduct his/her interview. . .

OPINION

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." Pitner did not meet his burden of proof.

MDPS general Order 9.14.04(3) (a) and (b) clearly requires that if the driver is incapacitated that the investigating officer go to the medical facility. It is axiomatic that the family of the victim of a serious accident would have questions about the accident and that the MDPS would have questions which could be answered by the accident victim or his or her family. Clearly those questions are best asked and answered by the investigating officer. Further, it is clear that Pitner, himself, failed to

conduct any of the follow up investigation of the accident. Pitner's failure to report to the hospital was a violation of MDPS General Order 9.14; and his failure to complete the accident investigation constituted a neglect of his duty and a failure to follow supervisor's instructions and perform assigned work.

For the foregoing reasons Pitners' reprimand is affirmed.

SO ORDERED THIS THE 15th DAY OF May, 2014.

MISSISSIPPI EMPLOYEE APPEALS
BOARD

BY:


INGRID DAVE WILLIAMS
Hearing Officer