

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

FILED
FEB 19 2015

LARRY LEWIS

APPELLANT

VS.

EMPLOYEE APPEALS BOARD

DOCKET NO.: 14-053

MISSISSIPPI DEPARTMENT OF CORRECTIONS

APPELLEE

ORDER

The appeal of this matter came on for hearing before Hearing Officer, B. Ray Therrell, II, on January 20, 2015, at the Mississippi State Personnel Board in Jackson, Mississippi. Present at the hearing were the Appellant, Larry Lewis (hereafter "Jones"), represented by the Honorable Bryant D. Guy, and the Mississippi Department of Corrections (hereafter "MDOC") represented by the Honorable David K. Scott, Special Assistant Attorney General.

FACTS

Lewis has been employed with MDOC as a System Administrator I. On October 24, 2014, Lewis received a Termination of Employment Letter, which alleged the following grounds for his termination:

Your termination is based upon the following reason (s):

1. On April 24, 2014 you traveled and worked offsite (Marshall County Corrections Facility) without notification or permission from your supervisor.
2. On April 25, 2014, Ms. Audrey McAfee, received a call and an email related to a list of property that you had sent to Ms. Tracy Walls, Property Manager, to transfer property out of your name to System Administrator I Lester Moon. You did not receive approval to make a transfer nor did you follow standard procedures in transferring the property. Based on emails from Mr. Moon, a verification of equipment, which is required, was not completed and Mr. Moon was only shown the final page of the inventory list that contained approximately three items, when there was actually a full page of inventory.
3. You failed to notify your supervisor of a date that you anticipated being on extended medical leave.

Insubordination, including, but not limited to, resisting management directives through actions and/or verbal exchange, and /or failure or refusal to follow supervisor's instruction, perform assigned work, or otherwise comply with applicable established written policy is a violation of Subparagraph Number 1 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations, updated July 2013.

Prior Discipline which was used as a basis of accumulation of offenses in disciplinary actions, include:

1. You were issued a written reprimand dated March 25, 2014 for violation of Subparagraph Number 1 and 4 of Appendix II (Second 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 Group II Offenses maybe disciplined by written reprimand and/or suspension without pay not to exceed five working days. Accumulation of two Group Two written reprimands within a one year period may result in demotion or dismissal. Accumulation of one written reprimand for a Group Two Offense and three written reprimands for Group One Offenses within a one year period may result in demotion or dismissal.

On November 7, 2014, Lewis timely filed an appeal to the Mississippi Employee Appeals Board. The appeal of this matter came on for hearing before Hearing Officer, B. Ray Therrell, II, on January 20, 2015, at the Mississippi State Personnel Board in Jackson, Mississippi.

The rules and regulations of the Mississippi State Personal Board clearly allocate the burden of proof to the Appellant to show by a preponderance of the evidence that the reasons stated in his termination notices are not true or sufficient for the actions taken by MDOC. Mississippi State Personnel Board Policy and Procedures Manual provides "the presiding hearing officer shall hear or receive evidence on only those reasons and allegations contained in the responding party's final disciplinary notice to the employee of such action." *See Section 10.7.18 Mississippi State Policy & Procedures Manual.*

The Mississippi Supreme Court has made clear that the administrative rule which places the burden of proof/persuasion on the employee is not merely semantics. In *Richmond vs. Mississippi*

Department of Human Services, 745 So.2d 254 (Miss. 1999), 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. Section 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 employment decision overturned. *Mississippi Employment Security Commission v. Collins*, 629 So.2d 576, 580 (Miss. 1993); Miss. Code Ann. Section 25-9-127.

The Termination Letter, dated October 24, 2014, indicates Lewis traveled to Marshall County Corrections facility without notification or permission. At the time of his termination, Lewis was employed as a System Administrator I, but acting in the capacity as a System Administrator II with MDOC. In acting in this position, Lewis was required to travel to different MDOC locations to assess and maintain computers. On April 24, 2014, Lewis travelled to the Marshall County Corrections Facility to work on their computers. Audrey McAfee, Lewis' supervisor and MIS Director, testified that while Lewis was allowed to conduct routine travel, any non-routine travel would require his supervisor's approval. She stated that Lewis was not authorized to travel to Marshall County without approval because it was considered non-routine travel. She further stated she was unaware Lewis had travelled to Marshall County until after Lewis had already arrived and contacted her for instructions.

Lewis argues he was following standard procedure. Lewis stated that although he did not get permission from his supervisor, he was told by Andre Esters, part of the network team, to go Marshall County to upgrade their computers. The Hearing Officer does not dispute that Lewis possibly received an instruction/request to go to Marshall County. However, the record clearly shows his trip to Marshall County was non-routine, which required approval from his supervisor, Audrey McAfee.

In addition, the Termination Letter also alleges Lewis transferred property to a co-worker, Lester Moon, in violation of standard procedures. Moon was a System Administrator I working for

about a month at Parchman. Moon testified that Lewis came to him and told him he needed to move three computers into his name. Moon testified he signed the acknowledgment of property, but only recalls seeing and signing one piece of paper, listing three computers. The inventory list was two pages. Lewis denies the allegation he only gave Moon the last page to sign. However, there is nothing in the record to dispute Moon's testimony. Lewis Further testified he did not ask his supervisor for permission to transfer the property. He stated he transferred control of the property to Moon because he was unsure whether his doctor was going take him off of work. Lewis' supervisor testified that she did not give any permission to transfer any property. Thus, Lewis did not have the authority to transfer the property.

The Hearing Officer, after considering the testimony and the evidence finds Lewis' actions of failing to obtain permission to travel to Marshall County and follow proper procedures on transferring property constituted a Group Two Offense Insubordination, which is defined as "resisting management directives through actions and/or verbal exchange, and/or failure or refusal to follow supervisor's instruction, perform assigned work, or otherwise comply with applicable established written policy." *See Mississippi State Policy & Procedures Manual Section 9.1 (B) (1).*

The Mississippi State Personnel Board Policy and Procedures Manual provides that "accumulation of two (2) Group Two written reprimands within a one (1) year period may result in demotion or dismissal." *See Mississippi State Personnel Board Policy and Procedures Manual 9.1 (B).*

Having considered the testimony of all the witnesses that testified at Lewis' appeal hearing, and having reviewed and considered all exhibits introduced into evidence, the hearing officer finds that Lewis failed to meet his burden of proof that any of the allegations upon which his termination was based were untrue. Furthermore, the hearing officer finds that Lewis likewise failed to meet his burden of proof that the action taken by the MDOC in terminating him was not justified for the conduct Lewis engaged in.

It is the opinion of the hearing officer, the reasons stated in the MDOC's Termination of Employment Letter, dated October 24, 2014, are sufficient grounds for insubordination and the action taken by MDOC. The record reflects that Lewis did accumulate two Group Two offenses within a one (1) year period. Accordingly, Lewis' termination from MDOC is AFFIRMED.

SO ORDERED, this the 19th day of February, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD



B. RAY THERRELL, II
Presiding Hearing Officer