

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

FILED

JEROME LEE

APPELLANT

OCT 30 2015

VS.

DOCKET NO. 15-025

EMPLOYEE APPEALS BOARD

MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY

RESPONDENT

ORDER

On April 30, 2015, Officer Jerome Lee, an Investigator with the Mississippi Bureau of Investigations, noticed a white Chevrolet pickup truck (hereafter "Chevrolet pickup") pass his unmarked vehicle at a high rate of speed. According to Officer Lee, the Chevrolet pickup was driving recklessly while in a construction zone with workers present. Officer Lee stated that he viewed this as a reckless situation because the excessive speed of the Chevrolet pickup put the lives of the construction workers at risk. For this reason, he activated his vehicle's blue lights and stopped and arrested the driver of the Chevrolet pickup.

Subsequently, the driver of the Chevrolet pickup complained to the Mississippi Department of Public Safety (hereafter "MDPS") because Officer Lee stopped and arrested him in an unmarked vehicle. Following this incident, Officer Lee was transferred from the Mississippi Bureau of Investigations to the Enforcement Division in District 6, Troop H of the Central Region Enforcement Division of Lauderdale County to serve as an Enforcement Officer. No disciplinary action was ever taken against Officer Lee, but Officer Lee concluded his transfer was in fact a disciplinary action by MDPS.

Officer Lee appealed his transfer to the Mississippi Employee Appeals Board alleging the MDPS' transfer was arbitrary or capricious. *See, Mississippi State Personnel Board Policy & Procedures Manual Chapter 10.2(G).*

The burden of proof is on Officer Lee to prove that his transfer from his investigator position to the uniform patrol position was arbitrary or capricious or was done for disciplinary reasons. *See, Mississippi State Personnel Board Policy and Procedures Manual 10.2(G)*. Also, *see Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999).

Even though Officer Lee was not charged with a disciplinary violation by the MDPS, the MDPS contended that Officer Lee disobeyed an order to refrain from stopping vehicles while in his unmarked vehicle, absent emergency situations. Officer Lee denied he had been so ordered. Further, Officer Lee contends that even if he had been aware of such policy, an emergency situation existed at the time, since the Chevrolet pickup was traveling at an exceedingly high rate of speed in a construction zone.

This tribunal need not determine whether Officer Lee had, prior to the incident in question, been advised to refrain from stopping vehicles in his unmarked vehicle absent an emergency situation, since after considering the testimony of all witnesses and documents introduced into evidence, this tribunal finds that Officer Lee's stop and arrest of the driver of the Chevrolet pickup was conducted in an emergency situation.

As noted, *supra*, Officer Lee was subsequently transferred from the MDPS Investigative Division to the Enforcement Division. Therefore, the propriety of that transfer is the controlling question in this case. More specifically, was the transfer of Officer Lee to the Enforcement Division arbitrary or capricious or imposed by the MDPS as discipline.

An agency's action is arbitrary "when it is not done according to reason or judgment, but depending on will alone." *Burkes v. Amite County School District*, 708 So.2d 1366 (Miss. 1998). An agency's action is capricious if it is done without reason, in an unusual manner, implying either

a lack of understanding of or a disregard for surrounding facts and settled controlling principals. *Id.* See also, *Miss. State Dept. Of Health v. Southwest Miss. Regional Development Medical Center*, 580 So.2d 1238 (Miss. 1991) (The Mississippi Supreme Court, quoting a North Carolina court, stated that “an act is arbitrary when it is done without adequately determining principle, not done according to reason or judgment but depending upon the will alone – absolute in power, tyrannical, desperate, not natural, implying either a lack of understanding or a disregard for the fundamental nature of things.” The same court further stated “capricious” means freakish, fickle or arbitrary. An act is capricious when it is done without reason, in a whimsical manner . . .).

In this case, there was testimony from the MDPS, that at the time Officer Lee was transferred to the Enforcement Division, the MDPS Enforcement Division was understaffed. Lt. Colonel Larry Waggoner, Lee’s supervisor, testified he thought it was better for Officer Lee to serve as an Enforcement Officer rather than a MBI officer. Colonel Donnell Berry of the MDPS testified Officer Lee had previously worked as an Enforcement Officer, had been an excellent Enforcement Officer (and MBI Officer) and that he believed it was in the MDPS’ interest and Officer Lee’s interest that Lee work as an Enforcement Officer. Testimony was also developed that in August, 2015, Officer Lee, after being transferred to the Enforcement Division, issued over 200 traffic citations.

Officer Lee confirmed that the MDPS was understaffed in the Enforcement Division. Officer Lee admitted he “wrote a lot of tickets.” He further testified that before being transferred to the Mississippi Bureau of Investigation Division of MDPS that he had worked as an Enforcement Officer for approximately 19 years. He also routinely worked as an Enforcement Officer while assigned to the Mississippi Bureau of Investigation Division, on his off days to earn additional income.

Having considered the facts and drawing certain inferences, this tribunal finds that the MDPS' transfer of Officer Lee from the Mississippi Bureau of Investigations to the Enforcement Division of the Mississippi Highway Patrol was not done by the MDPS as discipline to Officer Lee and that Lee's transfer was neither arbitrary or capricious. While it is true the MDPS considered Officer Lee's stop of the Chevrolet pickup in an unmarked vehicle in its decision to transfer Officer Lee, it was not the only reason. Additional reasons included: (1) the need for Enforcement Troopers; (2) Officer Lee's previous excellent work as an Enforcement Trooper; and (3) Lee's supervisor's decision that it was best for the MDPS, Officer Lee and the public, that Officer Lee return to the Enforcement Division of the Mississippi Highway Patrol.

This tribunal closely observed Lt. Col. Larry Waggoner and Colonel Berry during their testimony. It was obvious to this tribunal that both Lt. Col. Waggoner and Colonel Berry respect Officer Lee. In particular, Colonel Berry testified to Lee's excellent work record as both an Enforcement Officer and MBI Officer. There was nothing in either Colonel Berry's or Lt. Col. Waggoner's testimony that suggested either held any animosity or dislike toward Officer Lee.

While Officer Lee's arrest of the driver of the Chevrolet pickup was the catalyst that started MDPS' evaluation of the best place to utilize Officer Lee, this tribunal cannot, on the facts, find that Officer Lee met his burden of proof that his transfer was done arbitrarily or capriciously as defined by the *Burkes* court or as a disciplinary measure. The need for enforcement officers was established at the evidentiary hearing as a legitimate reason for Officer Lee's transfer – separate from Officer Lee's stop and arrest of the driver of the Chevrolet pickup. Further, this tribunal finds that both Colonel Berry and Lt. Col. Waggoner made a good faith administrative decision. As Lt. Col.

Waggoner testified “the decision to transfer Jerome was for the best interest of the [MDPS] and Jerome.”

For the foregoing reasons, judgment is entered for the Mississippi Department of Public Safety. Jerome Lee’s appeal to the Mississippi Employee Appeals Board is dismissed, with prejudice.

SO ORDERED, THIS THE 30 DAY OF OCTOBER, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: 
MICHAEL N. WATTS
Chief Hearing Officer