

FULL BOARD OF THE MISSISSIPPI EMPLOYEE APPEALS BOARD

JEROME LEE

FILED
JAN 06 2016

APPELLANT

VS.

NO. 15-025

MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY
EMPLOYEE APPEALS BOARD

APPELLEE

ORDER OF EAB BOARD, EN BANC

Appellant, Jerome Lee, (Lee) filed an appeal with the Employee Appeals Board, *en banc*. Lee appealed the Order entered by Hearing Officer Michael N. Watts on October 30, 2015. The EAB, *en banc*, has reviewed and considered the appeal of Lee filed in this matter. For the reasons stated herein, the Appeals Board hereby affirms.

FACTS

At the hearing on September 16, 2015, Hearing Officer Watts concluded Lee failed to meet the burden of proof establishing MDPS acted in an arbitrary and capricious manner by transferring Lee from the Mississippi Bureau of Investigation (MBI) to the Mississippi Highway Patrol, Enforcement Division, District 6, Troop H of the Central Region Enforcement Division of Lauderdale County.

On January 6, 1982, Lee submitted an application to become a cadet in the 1982 Mississippi Highway Patrol Trooper School. In doing so, Lee specifically stated that he was "willing to accept assignment or transfer to any part of the State of Mississippi." On or about January 14, 2014, Lee was employed as an investigator with MBI. While in an unmarked car and in plain clothes, Lee conducted a traffic stop. The driver complained to the Mississippi Department of Public Safety that the stop was improper because Lee was in an unmarked vehicle. An investigation ensued. A report was issued concluding Lee's stop was improper and inconsistent with the mission and purpose of the MBI.

On May 8, 2015, MBI received a similar complaint concerning Lee. This time, Lee conducted a stop of a white Chevrolet pickup truck after it passed his car at a high rate of speed and in a reckless manner in a construction zone. Lee contends the driver was putting the lives of construction workers at risk. He arrested the driver. The vehicle was towed and the driver was required to post bond to get out of jail.

On May 12, 2015, Lee was transferred from the MBI to the Enforcement Division in District 6, Troop H of the Central Region Enforcement Division of Lauderdale County to serve as an Enforcement Officer. Lee was not disciplined by the Mississippi Department of Public Safety (MDPS) related to the stop discussed above. Lee contends the transfer was arbitrary and capricious. Lee also contends he lost a component of his salary, in that he lost a "clothing card" which allows MBI officers to spend up to \$1,000.00 per year on clothing to be used while on duty. MBI officers are not provided with a uniform. No such allowance is provided for Highway Patrol Enforcement Officers, as they are provided with a uniform.

On June 9, 2015, Lee filed a grievance with the Mississippi Employee Appeals Board contending the transfer was arbitrary and capricious in nature and that he had a loss in salary (the clothing card) due to the transfer.

OPINION

The EAB, *en banc*, reviews the Hearing Officer's order in accordance with EAB Rule 25, which states that the EAB may review the Hearing Officer's Order to determine if the findings are in error, the decision is contrary to the law, or the procedural decisions were in error. The EAB, *en banc*, having reviewed the Hearing Officer's Order, and the evidence and testimony presented at the hearing, conclude that the Hearing Officer's findings were not in error.

Lee bears the burden of proving the decision of MDPS was arbitrary and capricious. There is no evidence to support this. To the contrary, the evidence demonstrates MDPS did not discipline Lee, even though Lee disobeyed an order to refrain from stopping vehicles while in his unmarked vehicle, absent emergency situations. Lee's transfer, however, was predicated on (1) the MDPS's need for Enforcement Troopers; (2) Lee's previous excellent work as an Enforcement Trooper; and (3) Lee's supervisor's decision that it was best for the MDPS, Lee and the public, that Lee return to the Enforcement Division of the Mississippi Highway Patrol. The evidence clearly demonstrates Lee previously worked as an enforcement officer prior to joining MBI. He had a well-earned reputation for good work as an enforcement officer. Lee had also displayed a particular predisposition to enforce traffic laws.

Consistent with *Short v. Wilson Meat House, LLC*, 36 So.3d 1247, 1250 (Miss. 2010), the Hearing Officer was correct in not disturbing the decision to transfer Lee. The decision to do so was clearly based upon the scope and power granted to the agency and based upon the needs of the department. "An administrative agency's decision is arbitrary when it is not done according to reason and judgment, but depending on the will alone. An act is capricious if done without reason, in a whimsical manner, implying either a lack of understanding or of disregard for their surrounding facts and settled controlling principles." *Davis v. Mississippi Department of Health*, 856 So.2d 485, 489 (Miss. App. 2003).

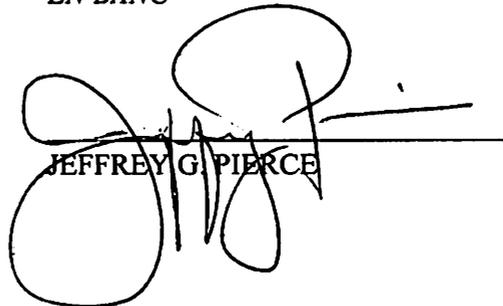
The Hearing Officer correctly concluded that Lee did not lose any compensation as a result of the transfer. The \$1,000.00 clothing card allowance is not income. The sole purpose of the clothing card for MBI investigators is to offset the expense of purchasing plain clothes because they do not receive a uniform as do MDPS enforcement officers. Because Lee was transferred to the Enforcement Division of the Mississippi Highway Patrol, he now receives his

clothing directly from the Mississippi Highway Patrol which is the same benefit of being provided a clothing card to purchase work clothes. The clothing card allowance is not added towards the earnings of any officer relating to their retirement or their "high four" salary in which retirement earnings are calculated and is not income.

For the foregoing reasons the Hearing Officer's Order of October 30, 2015 is affirmed. Lee's appeal is dismissed with prejudice.

SO ORDERED this the 5th day of January, 2016.

MISSISSIPPI EMPLOYEE APPEALS BOARD,
EN BANC



JEFFREY G. PIERCE