

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

STEPHEN T. ARMSTRONG

FILED  
SEP 02 2016

APPELLANT

V.

DOCKET NO. 16-020

MISSISSIPPI DEPARTMENT OF MENTAL HEALTH

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER

By letter dated June 8, 2016, Tramiel Armstrong (hereafter “Mr. Armstrong” or “Armstrong”), was terminated from his employment with the North Mississippi Regional Center<sup>1</sup>. Mr. Armstrong’s employment termination was effective June 8, 2016. Mr. Armstrong received written notice of his termination on June 17, 2016, and timely appealed his termination on June 23, 2016.

An evidentiary hearing was held on August 9, 2016. The North Mississippi Regional Center was represented by Cyndi Eubank. Mr. Armstrong was *pro se*.

Mr. Armstrong has the burden of proof on his appeal. Specifically, to prevail Mr. Armstrong must prove either (1) that the Mississippi Department of Mental Health’s allegations set forth in his June 8, 2016, termination letter are untrue, or (2) that if the allegations were true, the actions that the Mississippi Department of Mental Health took in terminating him were too severe for the conduct in which Mr. Armstrong engaged. *See, Mississippi State Personnel Board Policy and Procedures Manual*, effective date 7/1/2015, Chapter 10, Section 20.B.

In addressing an employee’s burden of proof, the Mississippi Supreme Court stated in *Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999), the following:

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<sup>1</sup>“The North Mississippi Regional Center” and the “Mississippi Department of Mental Health” are used interchangeably throughout this Order.

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. § 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 alleged conduct did not occur, the employee has no right to have the employment decision overturned. *Mississippi Employment Security Commission v. Collins*, 629 So. 2d 576, 580 (Miss. 1993); Miss. Code Ann. § 25-9-127.

Recently the Mississippi Supreme Court has reminded us that the State's termination of employment of a state-service employee is presumed to be correct. *See, Ray v. Mississippi Department of Public Safety*, 172 So.3d 182 (Miss. 2015). There is a "rebuttable presumption in favor of the agency's decision." *Id.*

Did Mr. Armstrong meet his burden of proof that the allegation that he falsified state records was untrue? Stated another way, did Armstrong rebut the presumption that NMRC's termination of him was correct? This tribunal, having considered the testimony of all witnesses, their demeanor and credibility, and after having considered all exhibits admitted into evidence, finds as a fact that Mr. Armstrong did not meet his burden of proof that the reasons set forth in Armstrong's June 8, 2016, termination letter were untrue. The reasoning for this tribunal's findings follow.

Mr. Armstrong's June 8, 2016, termination letter charged Mr. Armstrong with three (3) Group III offenses in alleged violation of the rules and regulations of *The State of Mississippi Employee Handbook*. Specifically, Mr. Armstrong's June 8, 2016, termination letter made the following allegations against him:

After careful consideration of all the facts, it is my determination that your conduct (stated below) constitutes grounds for termination as stipulated in the State of Mississippi Employee Handbook and the Addendum thereto of the Department of Mental Health. This termination is based on the following facts.

On April 20, 2016 you conducted a Mandt Recertification class with 11 employees. During this training, of which you are certified as an instructor, you failed to adequately cover the material in accordance with your training and had the employees falsify that they had received 12 hours of training when in fact the class only lasted 2 hours and 45 minutes. This lack of training being provided in the prescribed manner could have jeopardized the safety and well-being of the staff members and the individuals served by NMRC. Additionally, you falsely stated during the investigation that participants demonstrated “physically and verbally the moves used to assist clients for safety” and that you “stayed at Bodock Grove until 4 pm.” You also certified that each individual demonstrated the correct procedures to you and initialed a form verifying such.

That predicated upon the above, you have committed “falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official state documents” and “an act or acts of conduct occurring on or off the job which are plainly related to job performance and are of such a nature that to continue the employee in the assigned position could constitute negligence in regard to the agency’s duties to the public or to other State employees.”

Such actions constitute three (3) Group III offenses according to the rules and regulations of the State of Mississippi Employee Handbook and the Addendum thereto of the Department of Mental Health.

Mr. Armstrong admitted during the August 9, 2016, evidentiary hearing that he falsified state records. Mr. Armstrong’s position at the evidentiary hearing was that while he falsified records concerning the Mandt Recertification class, so did a number of other NMRC employees.

It is true that a number of NMRC employees placed on their NMRC/SDD Attendance

Roll/Program Sheet that they attended the Mandt Recertification class on April 20, 2016, from 9:00 a.m. to 5:30 p.m. for eight hours when they had not. It is also true that NMRC employees stated they attended the Mandt Recertification class from 9:00 a.m. to 1:00 p.m. for four hours on April 21, 2016, when in fact they had not. The evidence adduced at the hearing also established that a number of NMRC employees had not demonstrated “physically and verbally the moves used to assist clients for safety,” which is required for NMRC employees to properly obtain Mandt recertification. While false statements by other NMRC employees are not condoned by this tribunal, their false statements do not provide a defense to Mr. Armstrong. Mr. Armstrong’s argument that he should not be terminated because “others did it too” is not a basis in law for this tribunal to reverse Armstrong’s termination.

Having found that Mr. Armstrong did not meet his burden of proof that he did not commit the three (3) Group III offenses as alleged in his June 8, 2016, termination letter, the only remaining issue is whether Armstrong met his burden of proof/persuasion that the action taken against him – termination – was too severe for the conduct in which Armstrong engaged. Having considered the evidence, this tribunal finds that NMRC terminating Armstrong was not too severe a punishment for his conduct of falsifying state records and committing three (3) Group III offenses.

This is not a case where Armstrong cancelled class a few minutes early each day, or either day. He certified his class was present for the entire time between 9:00 a.m. and 5:30 p.m. on April 20, 2016, and between 9:00 a.m. and 1:00 p.m. on April 21, 2016. Based on the testimony from the witnesses, this tribunal is convinced that the Mandt Recertification class on April 20, 2016, ended by approximately noon on April 20, 2016. This is so because Armstrong and

several NMRC employees stopped for lunch after leaving the facility in Pontotoc County and arrived in Baldwin, Mississippi, for one employee, Anderson, to pick up her car by approximately 2:00 p.m. on April 20, 2016.

Further, several witnesses testified that Armstrong did not teach the recertification class, but simply went over test questions and answers. Other employees testified that they were told by Armstrong to complete both the April 20, 2016, and April 21, 2016, Roll/Program Sheets on the first day of class – April 20, 2016. This tribunal finds these witnesses' testimony truthful.

Accordingly, this tribunal finds as a fact that Armstrong failed to meet his burden of proof/persuasion that his termination was too severe for the conduct in which he engaged. NMRC's termination of Mr. Armstrong is affirmed. Mr. Armstrong's appeal is dismissed, with prejudice.

SO ORDERED, THIS THE 2 DAY OF September, 2016.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:



MICHAEL N. WATTS

Chief Hearing Officer