

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

JOHN E. JONES

FILED

APPELLANT

V.

SEP 20 2016

DOCKET NO. 16-018

MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY ("MDES")

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER

On April 1, 2016, John E. Jones (hereafter "Mr. Jones" or "Jones"), was issued a written reprimand by his supervisor, Ana Maria Price. The April 1, 2016, written reprimand alleged three (3) Group II offenses in violation of the *Mississippi State Employee Handbook* (eff. 7/1/2015).

An evidentiary hearing occurred over three (3) days beginning on July 28, 2016, continuing on August 11, 2016, and concluding on August 12, 2016. The Mississippi Department of Employment Security¹ was represented by Abigail M. Marbury. Mr. Jones was *pro se*.

Mr. Jones has the burden of proof on his appeal. Specifically, to prevail, Mr. Jones must prove either (1) that the Mississippi Department of Employment Security's allegations set forth in the April 1, 2016, written reprimand are untrue, or (2) that if the allegations were true, the actions that the Mississippi Department of Employment Security took in reprimanding Jones were too severe a punishment for the conduct in which Mr. Jones 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:

¹ The Mississippi Department of Employment Security and MDES 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/agency's disciplinary action 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. Jones meet his burden of proof that any one of the three Group II allegations in the April 1, 2016, written reprimand were untrue? Having considered the testimony of all witnesses, their demeanor and credibility, and after having considered all exhibits admitted into evidence, this tribunal finds as a fact that Mr. Jones did not meet his burden of proof that one or more of the Group II offenses alleged in the April 1, 2016, written reprimand were untrue. The reasons for this tribunal's findings follow.

Mr. Jones' April 1, 2016, written reprimand alleged Mr. Jones committed three (3) Group II offenses in alleged violation of the rules and regulations of the *Mississippi State Employee Handbook*. Specifically, Mr. Jones' April 1, 2016, written reprimand made the following allegations against him:

1. *Failure to complete the requirements outlined in the Review and Feedback you signed on February, 11, 2016 within thirty (30) days and according to the schedule outlined in that document. Your Review and Feedback required you to complete four (4) Skillport*

online classes in a thirty (30) day period. As part of the review and feedback process, you specifically requested to start these classes several days late compressing the time in which you had to complete the classes. Further, you were authorized to use one hour from 10:00 a.m. to 11:00 a.m. over a ten (10) day period to complete the courses in addition to other free time. Yet, not only did you fail to complete any of the classes but also you only started one class (Exhibit 1 - Skillport classes). Your supervisor did not request the results of your coursework until March 11, 2016. Yet you still did not complete a single course by that date. At no time during the thirty (30) day period did you alert anyone in the agency that you were having difficulty with Skillport; not anyone in technical services, your supervisor, human capital, the legal department or anyone else in the agency. Not all of your tasks in the Review and Feedback were classes. You were also required to create an inventory of the files in cabinets which you had stopped addressing by creating a simple list or spreadsheet. In case you did not know which files to address, photos of the files were attached to the Review and Feedback document. At the end of the thirty (30) day period, no inventory or list was provided at all. Again, you failed to notify your supervisor or anyone else at the agency that you were having difficulty with this inventory task. (Exhibit 2 - Review and Feedback dated February 11, 2016).

2. *You have received instruction from your supervisor on many occasions, both written and verbal, to provide status reports to customers when working on their inquiries, yet you have failed to do so.* Your failure to provide consistent weekly status reports has resulted in complaints from customers and even an inquiry from a state legislator on behalf of a customer about the status of customer requests for assistance assigned to you. For example, on March 22, 2016, your supervisor received a notice that a state legislator requested assistance on behalf of a specific customer. This customer, serviced by a consultant had different types of problems starting in December, 2015. Despite your supervisor's repeated instructions to you to provide weekly status reports to this customer regarding the progress of your work on this customer's different requests for assistance, you did not update or contact the customer. Your supervisor had to update the client as to the reason for the delay and lack of contact leading to the resolution of the most pressing item in a day. From January 28, 2016 through March 22, 2016, you failed to contact the customer at all about the different outstanding needs from that customer. (Exhibit 3 - Email thread). With another customer, your supervisor received a phone call from a consulting

firm, noting that they had called you on or about February 22, 2016 to work with you to upload applications. However, after a month you had apparently ignored phone calls and emails from the consulting firm. You had no documentation to show that you had been in contact with the consulting firm to work with them on the problem. Your supervisor explained that another purpose of immediate and weekly emails to customers is not simply good customer service but also to demonstrate a history of good service to the customer. This problem required the intervention of your supervisor to address. (Exhibit 4 - Memo to file dated March 2, 2016). Another example of your failure to send weekly status reports, involved an assignment you received on or about February 23, 2016. You received a list of applications from 2013 and 2014 to research and address with no specific time limit to complete the task. However, you were to send weekly updates to the client regarding your progress on the assignment. On Monday, March 14, 2016, your supervisor received an email from the customer inquiring as to the status of the work. Your supervisor had to make two requests for you to send a status report at which time you admitted that you had not communicated any information to the customer. In addition, you continued to seek guidance regarding how to perform your job. You had to be instructed yet again to provide a status report to the customer with a time deadline. Even though your supervisor requested to preview a copy of your report to the customer, you ignored her instruction to do so. (Exhibit 5 - Email thread)

Such conduct constitutes a Group Two Offense as set forth in the *Mississippi State Employee Handbook* (eff. 7/1/2015), and as cited above.

The first allegation against Mr. Jones is insubordination which stems from his failure to complete four (4) Skillport online classes in a thirty (30) day period. Specifically, Jones was instructed by his immediate supervisor, Ana Price, on February 11, 2016, to complete the Skillport online courses within thirty (30) days. Jones was authorized to use an hour a day from 10:00 a.m. to 11:00 a.m. over a ten (10) day period to provide time for him to complete the courses. Jones also had other time that he could have used to work on the Skillport classes. Notwithstanding the fact that Jones had sufficient time to complete the four Skillport online classes by March 11, 2016, Jones did not complete any of the four required Skillport classes by March 11, 2016. Further, Jones had

only started one of the Skillport classes by the March 11, 2016, deadline. In fact, Jones had not completed any of the Skillport classes at the time of his MEAB evidentiary hearings in July, 2016 and August, 2016. Jones did not seek additional time after March 11, 2016, from any of his supervisors to obtain additional time to complete the classes or to start the classes.

There was severe personality and work conflicts between Jones and Price. Jones has worked at MDES for many years. Price did not begin work with MDES until October, 2015. Price became Jones' supervisor immediately after being hired by the MDES. The conflict between Price and Jones began at one of their first meetings. At their meeting, Price told Jones and other MDES employees under her supervision that regardless of how their prior supervisor had managed their division, under Price's supervision all employees would be required to follow protocol and established rules. Over the ensuing days and weeks, numerous conflicts arose between Price and Jones.²

Jones alleges that his receipt of the three Group II offenses upon which his written reprimand is based were given to him for retaliatory purposes. Having considered all the evidence, both oral and documentary, and having drawn certain inferences from the evidence, this tribunal finds as a fact that neither Jones' April 1, 2016, written reprimand, or any of the allegations upon which Jones' written reprimand were predicated, occurred as a result of retaliation against Jones by Price or any other MDES supervisor of Jones. Jones' failure to complete or attempt to complete the Skillport classes was intentional conduct by Jones. Jones refused to timely complete the Skillport classes because of being upset by Price becoming his supervisor.

²These conflicts are too numerous to delineate in this Opinion. The reader is directed to the testimony of Jones and Price during the evidentiary hearing of Jones' appeal.

The second alleged Group II offense of insubordination alleges that Jones failed to create an inventory of the files in his filing cabinets. The two primary witnesses who provided evidence on the issue of whether or not Jones properly completed the inventory were Jones and Price. Price testified that Jones did not create an inventory of the files as she had directed. A significant portion of Jones' testimony did not address any legitimate reason of why he did not complete the inventory as directed. Jones did not provide any documentation to establish that he completed the inventory, or that he made a serious good faith attempt to complete the inventory. Having considered the facts, this tribunal finds as fact that Jones did not meet his burden of proof/persuasion that he completed the inventory or attempted to complete the inventory, or that he could not complete the inventory because of an overload of work or any other legitimate reason failed to do so. Again, it was Jones' dissatisfaction of Price as his supervisor which led Jones to intentionally not follow Price's order to complete the inventory. Accordingly, Jones did not meet his burden of proof that his actions in not following Price's instruction concerning the inventory did not constitute insubordination within the meaning of Section 7.1.1 of the *Mississippi State Employee Handbook* (eff. 7/1/2015).

Jones' next alleged Group II offense was predicated on the following alleged facts.

. . . . On March 22, 2016, your [Jones'] supervisor received a notice that a state legislator requested assistance on behalf of a specific customer. . . . Despite your supervisor's repeated instructions to you to provide weekly status reports to this customer regarding the progress of your work on this customer's different requests for assistance, you did not update or contact the customer. . . . From January 28, 2016 through March 22, 2016, you failed to contact the customer at all about the different outstanding needs from that customer. (Exhibit 3 - Email thread). With another customer, your supervisor received a phone call from a consulting firm, noting that they had called you on or about February 22, 2016 to work with you to upload applications. However, after a month you had apparently ignored phone calls and emails from the consulting

firm. You had no documentation to show that you had been in contact with the consulting firm to work with them on the problem.

. . . . Another example of your failure to send weekly status reports, involved an assignment you received on or about February 23, 2016. You received a list of applications from 2013 and 2014 to research and address with no specific time limit to complete the task. However, you were to send weekly updates to the client regarding your progress on the assignment. On Monday, March 14, 2016, your supervisor received an email from the customer inquiring as to the status of the work. Your supervisor had to make two requests for you to send a status report at which time you admitted that you had not communicated any information to the customer. In addition, you continued to seek guidance regarding how to perform your job. You had to be instructed yet again to provide a status report to the customer with a time deadline. Even though your supervisor requested to preview a copy of your report to the customer, you ignored her instruction to do so.

There was conflicting testimony concerning whether Jones provided the weekly status reports to customers as he was directed to do. Mr. Jones testified that he had a positive relationship with a number of customers. Jones also testified that during his many years of MDES employment he had helped many of MDES' customers. Price testified that Jones had been instructed, more than once, to provide weekly status reports to customers yet Jones failed to do so.

The evidence established that Jones did not provide a weekly status report to his customers when working on their inquiries. This is confirmed by an email string between Price and Jones on March 17, 2016, where Price asked Jones what information he had provided to Ms _____.³ Jones responded "I have not called or emailed Ms. ____ about the information I made notes in the system."

Jones' March 17, 2016, failure to have contacted the customer was not an isolated incident. See memo to file from Price, 03/02/16 where Price memorialized that a customer "had not heard

³For privacy reasons, the customer's name was redacted from the email.

from John Jones at all since February 22.” Because Jones did not meet his burden of proof/persuasion that the allegation that he failed to “provide status reports to customers when working on their inquiries was untrue,” Jones’ Group II offense of insubordination on this ground is affirmed.

In addition to insubordination, Jones’ written reprimand also included an allegation that Jones violated Section 5.3 of the *Mississippi State Employee Handbook* (eff. 7/1/2015). Section 5.3 of the *Mississippi State Employee Handbook* (eff. 7/1/2015) titled Diligence During Work Period specifically states, “All employees must apply themselves to their assigned duties during the full schedule for which compensation is being received, except for reasonable time provided to take care of personal needs.”

Based on the record, this tribunal finds Jones did not meet his burden of proof/persuasion that he did not violate Section 5.3 of the *Mississippi State Employee Handbook* (eff. 7/1/2015). This is so because Jones was not diligent in completing the four assigned Skillport classes, in completing the inventory as directed by Price, or in providing status reports to customers when working on their inquiries.

Having found that Jones did not meet his burden of proof/persuasion that he did not engage in the conduct set forth in Jones’ April 1, 2016, written reprimand, the only remaining issue is whether Jones met his burden of proof/persuasion that the receipt of the April 1, 2016, written reprimand was too severe a punishment for the conduct in which he engaged.

Chapter 7 of *Mississippi State Employee Handbook* (eff. 7/1/2015) provides that the commission of a Group II offense may be disciplined by written reprimand and/or suspension without pay not to exceed five (5) working days. Because MDES’ discipline of Jones by the April 1, 2016, written reprimand is a punishment allowed by Chapter 7 of the *Mississippi State Employee*

Handbook (eff. 7/1/2015), this tribunal may not reverse Jones' written reprimand. *See, Mississippi State Personnel Board Policy and Procedures Manual*, effective date 7/1/2015, Chapter 10, Section 24.B.

For the reasons stated in this opinion, Jones' appeal is dismissed, with prejudice.

SO ORDERED, THIS THE 19 DAY OF SEPTEMBER, 2016.

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY: 
MICHAEL N. WATTS
Chief Hearing Officer