

FILED
OCT 03 2012

EMPLOYEE APPEALS BOARD

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

WILLIAM G. PITTS, JR.

APPELLANT

VS.

CASE NO: 12-034

**MISSISSIPPI DEPARTMENT OF
MENTAL HEALTH**

RESPONDENT

ORDER OF HEARING OFFICER

THIS CAUSE came on for hearing on September 25, 2012, in Ellisville, Ms. at the Ellisville State School. William G. Pitts, Jr. ("Pitts") appeals his termination effective June 8, 2012. Pitts represented himself and the Mississippi Department of Mental Health ("MDMH") was represented by Gene Rowzee, attorney at law. The Agency representative present at the hearing was Renee Brett, Facility Director, Ellisville State School.

FINDINGS OF FACT

Pitts has been employed since January, 1997, as the Warehouse Manager 1 in the Maintenance Department at the Ellisville State School. In his job, Pitts has limited contact with clients at the Ellisville State School. Prior to the incident which is the subject of this appeal, Pitts record was spotless and his job performance admirable. On Sunday, March 18, 2012, Pitts was arrested for misdemeanor assault upon his wife. He was ordered to attend Pine Belt Mental Health Facility beginning March 21, 2012 until April 5, 2012 for anger management. Thereafter, he attended anger management sessions in the employee assistance program at the Ellisville State School and was released with a favorable recommendation. Prior to March 18, 2012, Pitts had no recorded incident of any type of physical altercation.

On May 22, 2012, Pitts was issued a written reprimand for a Group III, No. 11 offense of an act of conduct, including but not limited to, the arrest or conviction for a felony or

misdemeanor occurring on or off the job which is plainly related to job performance and is of such 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. The Ellisville State School has a zero (0) tolerance policy for anyone who commits a violent act due to the vulnerable population it serves and the act of Pitts on March 18, 2012, was considered by the facility administrator to be violent.

CONCLUSIONS OF LAW

Pitts has the burden of proving that the grounds upon which the Written Reprimand and termination were based are insufficient or not true. Pitts does not dispute that the assault occurred therefore the issue is whether the grounds were insufficient. The group Three, No. 11 offense is listed in the MSPB Handbook as follows:

an act or acts of conduct, including, but not limited to, the arrest or conviction for a felony or misdemeanor occurring on or off the job which are *plainly related to job performance* (emphasis added) and are of such 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; Id.

To be sufficient, the grounds for termination, the assault, which was a misdemeanor occurring off the job, must be plainly related to job performance. Pitts sustained his burden of proving that it was not. Pitts record as an employee was spotless. He had no record of any type of violent act before this incident. Following his suspension from employment, an audit of his department was performed and the Ellisville State School found nothing missing and, more significantly, nothing to indicate that there could be a subsequent assault at work. Likewise, nothing in the record indicated that Pitts was likely to commit such an act again off the job. Pitts underwent in-patient and out-patient therapy following this incident and was released with a favorable report. Finally, there was no evidence to suggest that the population served by the

Ellisville State School was at risk as Pitts has minimal involvement with the clients at the school.

Based upon the foregoing, the Appeal of William G. Pitts of his termination is hereby upheld and the termination reversed. William G. Pitts is to be reinstated in his employment with the Mississippi Department of Mental Health. Pitts is to be given back pay and benefits from April 8, 2012.

SO ORDERED THIS THE 3rdTH DAY OF OCTOBER, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD



WESLA SULLIVAN LEECH
HEARING OFFICER