

**FILED**

**NOV 14 2012**

**EMPLOYEE APPEALS BOARD**

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**DARRELL E. DEW**

**APPELLANT**

**VS.**

**NO. 12-035**

**MISSISSIPPI DEPARTMENT OF WILDLIFE,  
FISHERIES AND PARKS**

**RESPONDENT**

**ORDER**

Presently before the undersigned hearing officer is an appeal by Master Sergeant Darrell E. Dew (hereafter "Dew"). Dew, at all pertinent times, was as employee of the Mississippi Department of Wildlife, Fisheries and Parks. Dew was terminated from his job by the Mississippi Department of Wildlife, Fisheries and Parks. At the time of his termination, Dew had served twelve months as a state service employee. By letter dated June 4, 2012, Dew was provided a Notice of Separation from Employment by the Mississippi Department of Wildlife, Fisheries and Parks. The June 4, 2012, termination letter was signed by Sam Polles, Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks. The June 4, 2012, termination letter alleged that Dew allegedly committed certain wildlife, hunting and trapping violations and that an investigation by undercover officers of the Mississippi Department of Wildlife, Fisheries and Parks confirmed that Dew committed the aforesaid violations while he was "on duty" status.

Dew's termination letter stated that Dew's actions constituted "a Group Three Number 10 offense of, 'unauthorized use or misuse of State property or records,' and a Group Three Number 11 offense of, 'an act or acts of conduct including, but not limited to, the arrest or conviction of a felony or misdemeanor 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 other state employees.”

Dew was provided a May 17, 2012, letter from the Mississippi Department of Wildlife, Fisheries and Parks that advised Dew of a pre-disciplinary conference. The May 17, 2012, letter provided, in pertinent part, “Please be advised that on May 24, 2012, or as soon thereafter as possible, a decision will be made that could result in disciplinary action against you, up to and including termination of your employment with the Department.” The May 17, 2012, letter also stated under the section entitled “Your Rights,” “You have the right to respond to the above charges in writing or orally, or both. Any written response must be received by Colonel Adcock [Dr. Sam Polles’ designee] no later than May 23, 2012. You must notify Colonel Adcock no later than May 23, 2012, as to whether or not you decide to respond orally.”

The record reflects that Dew received this May 17, 2012, “pre-disciplinary conference” letter on May 18, 2012. At his appeal hearing, Dew, through counsel, made a motion requesting the EAB reverse Dew’s termination on the basis that the Mississippi Department of Wildlife, Fisheries and Parks did not provide Dew ten (10) working days between the date of his notification of pre-disciplinary conference and the actual pre-termination conference as required by Section 9.3 (Due Process) of the *Mississippi State Personnel Board Policy and Procedures Manual*. Section 9.3 provides:

All permanent State Service employees, i.e., all State government employees who have successfully served twelve months in State-Service designated positions, are entitled to procedural due process of law prior to any employment action to dismiss or otherwise adversely affect their compensation or employment status. The process which is due to each State Service employee is written notice of a proposed disciplinary

action which states with sufficient particularity what charges or allegations are being made concerning the employee, the proposed discipline which may be taken, and the opportunity for a conference with the appointing authority or designated representative allowing the employee to respond and present a defense to the allegations prior to final action by the appointing authority. The written notice shall be presented to the employee at least ten working days prior to the conference. The employee may also respond in writing to the allegations contained in the written notice. (Emphasis added)

The Mississippi Department of Wildlife, Fisheries and Parks does not deny that Dew was not provided ten working days from the date of his written notification of his pre-disciplinary conference and the actual pre-disciplinary conference on May 24, 2012. It contends though that under various Mississippi cases, including *Payne v. Mississippi Department of Mental Health*, 964 So. 2d 582 (Miss. Ct. App. 2007), *Harris v. Mississippi Department of Corrections*, 831 So. 2d 1105 (Miss. 2002), *Mississippi State Department of Health v. Hogue*, 801 So. 2d 794 (Miss. Ct. App. 2001), and *Davis v. Mississippi State Department of Health*, 856 So. 2d 485 (Miss. Ct. App. 2003), that because the appeal to the Employee Appeals Board is *de novo*, any due process deprivation that occurred is remedied by an EAB hearing.

Having considered Dew's Motion, the Mississippi Department of Wildlife, Fisheries and Parks' arguments and the cases cited by it, I find that Dew's termination must be reversed. The Mississippi Department of Wildlife, Fisheries and Parks failed to provide Dew the required ten (10) working days between the date it notified him that a pre-disciplinary conference would be held and the date the conference was held. Dew was only provided three working days' notice. Requiring Dew to attend the pre-disciplinary

conference with only three (3) working days' notice was a violation of Dew's procedural due process rights.

The scope and intent of the *Mississippi State Personnel Board Policy and Procedures Manual* is as follows:

This manual contains the policies and rules of the Mississippi state employment service and applies to all employees placed under the purview of the Mississippi State Personnel Board by Mississippi Code Annotated § 25-9-101, *et. seq.* and other pertinent laws.

...

The purpose of this manual is to provide a standardized, comprehensive system of human capital administration consistent with Mississippi's laws.

As a state government employee under the purview of the Mississippi State Personnel Board, Dew was entitled to procedural due process as set forth by Section 9.3. Because Dew was not given the procedural due process to which he was entitled, his June 4, 2012, termination is REVERSED. This case is REMANDED to the Mississippi Department of Wildlife, Fisheries and Parks for Dew to be provided procedural due process.

SO ORDERED, THIS THE 14 DAY OF November, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: Michael Watts  
MICHAEL N. WATTS  
Presiding Hearing Officer