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EMPLOYEE APPEALS BOARD
BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

JIMMY HUNT

APPELLANT

VS.

DOCKET NO. 13-047

MISSISSIPPI DEPARTMENT OF CORRECTIONS

RESPONDENT

ORDER

Before the Mississippi Employee Appeals Board is the appeal by Jimmy Hunt ("Hunt" or "Appellant") for being demoted by the Mississippi Department of Corrections ("MDOC"). A hearing was held on Hunt's appeal on October 16, 2013. Hunt was represented by Ellis Pittman. The MDOC was represented by David Scott.

Having considered the testimony of all witnesses who testified at the appeal hearing and having considered all exhibits introduced into evidence, this tribunal enters the following Order.

FINDINGS OF FACT

1. Hunt was initially hired by the MDOC on January 2, 1992.
2. By letter dated August 8, 2013, Hunt was demoted from a Correctional Supervisor to Correctional Officer IV, effective September 1, 2013.
3. At the time of Hunt's demotion, he had been employed by the MDOC for approximately twenty-two (22) years.

4. The August 8, 2013, demotion letter provided the following:

Your demotion is based upon the following reason(s):

On July 6th and 7th, 2013, at approximately 0800 hours, you removed two offenders from Unit 26-B Building and carried them to your home on MSP grounds to complete work on the house. These offenders were not placed on transfers to be at your house on either day which is in violation of the documented Standard Operating Procedure for offenders working at employees housing at MSP. You

failed to ensure that the transfers on the offenders working at your residence were done prior to picking them up.

Insubordination, including, but not limited to, resisting management directives through actions and/or verbal exchange, and/or failure or refusal to follow supervisor's instruction, perform assigned work, or otherwise comply with applicable established written policy is a violation of Subparagraph Number 1 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated January 2013.

Unauthorized use or misuse of State Property or records is a violation of Subparagraph Number 12 of Appendix III (Third Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated January 2013.

Mississippi State Employee's Handbook. January 2013 edition, states that Group II Offenses may be disciplined by written reprimand and/or suspension without pay not to exceed five working days. Accumulation of two Group Two written reprimands within a one year period may result in demotion or dismissal. Accumulation of one written reprimand for a Group Two Offense and three written reprimands for Group One offenses within a one year period may result in demotion or dismissal. The commission of one Group Three Offense may be disciplined by the agency with a written reprimand and/ or may result in suspension without pay for up to thirty (30) working days, demotion, or dismissal.

5. On July 6 and 7, 2013, Hunt transferred two inmates, Walter Marcoon and Steven McDonald, from Unit 26-B to his home without completing a transfer form for either inmate, on either July 6 or July 7, 2013.

6. On July 6 and July 7, 2013, the MDOC had in effect Standard Operating Procedure Number 16-06-02 (SOP 16-06-02).

7. Standard Operating Procedure Number 16-06-02, by its terms, applied to all employees involved in the movement and transportation of offenders. Standard Operating Procedure Number 16-06-02 applied to Hunt and the two inmates transferred to Hunt's residence.

8. Standard Operating Procedure Number 16-06-02 required that transfers be completed in the following transport situations:

- Movement to and from the Classification Department
- Inter-facility transport
- Intra-facility transport
- Movement to and from Parole Board hearings.

9. The two inmates who were moved by Hunt to his residence were transferred "intra-facility" from the Mississippi State Penitentiary within the meaning of Standard Operating Procedure Number 16-06-02.

10. Hunt was required, pursuant to Standard Operating Procedure Number 16-06-02, to complete a transfer slip on both inmates he transferred to his house, on both July 6 and July 7, 2013.

11. Hunt did not complete a transfer for either offender on either July 6 or July 7, 2013. Hunt's failure to complete the transfer of the inmates was a violation of Standard Operating Procedure Number 16-06-02.

12. Hunt's failure to complete a transfer for Marcoon or McDonald, on either July 6 or July 7, 2013, was not an intentional violation by Hunt of Standard Operating Procedure Number 16-06-02, but occurred because Hunt mistakenly believed that another MDOC employee, Manuel Coleman, would complete the transfer documents for Marcoon and McDonald.

13. Marcoon and McDonald were transported to Hunt's house in a MDOC vehicle.

14. Hunt leased a house from the MDOC that was located on the grounds of the Mississippi State Penitentiary, Parchman, Mississippi. The house was owned by the State of Mississippi.

15. The inmates who were transported to Hunt's house worked on Hunt's porch. Specifically, the inmates placed screen wire on the porch. It was necessary for Hunt to install screen wire on the porch because of flies and mosquito problems. Hunt purchased new screen wire and that wire was installed on the porch.

16. A reason for flies and mosquitos being bad at Hunt's house was because the chemical truck was not running on the morning and afternoon on July 6, 2013 and July 7, 2013.

17. Hunt did not, at any time, misuse any State property or records.

18. Hunt did not, at any time, use State property or records in an unauthorized manner.

19. Hunt did not, at any time, use any State property or records without authorization.

20. On July 6 and July 7, 2013, Hunt was a Lieutenant (Correctional Supervisor) whose duty status was the K-9 Unit at the Mississippi State Penitentiary at Parchman, Mississippi.

21. Hunt's job responsibilities as a Correctional Supervisor at the K-9 Unit required he be available and on-call twenty-four (24) hours a day, seven (7) days a week.

22. Hunt's job responsibilities required he be on call seven days a week, twenty-four hours a day for institution emergencies.

23. At all material times, Marshall Turner was a Deputy Warden of the MDOC, whose work assignment was the Mississippi State Penitentiary at Parchman, Mississippi, and at all materials times, Marshall Turner was a superior of Hunt.

24. At all material times, Manuel Coleman was a Construction Supervisor for the Maintenance Department at the Mississippi State Penitentiary at Parchman, Mississippi, and at certain times inmates Walter Marcoon and Steven McDonald were under Coleman's supervision and direction.

CONCLUSIONS OF LAW

As the Appellant and employee, Hunt has the burden of proof/persuasion that the allegations upon which his demotion was based are either (1) untrue or, (2) if true, the actions taken by the MDOC in demoting him were not justified for the conduct that he engaged in. *See, Mississippi State Personnel Board Policy and Procedures Manual 10.7.21(C).*

The Mississippi Supreme Court has made clear that the administrative rule which places the burden of proof/persuasion on the employee is not merely semantics. In *Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999) the court stated:

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 Appcals 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 employec 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.

Having considered the testimony of all witnesses who testified at the appeal hearing and having considered all of the exhibits introduced into evidence at the appeal hearing, this tribunal finds that Hunt failed to meet his burden of proof that MDOC's allegations that Hunt violated Standard Operating Procedure Number 16-06-02 by failing to complete the transfers on July 6 and 7, 2013, on inmates Marcoon and McDonald were untrue. Hunt's failure to adhere to Standard Operating Procedure Number 16-06-02 was insubordination and a violation of Subparagraph Number 1 of Appendix II.

In regard to the MDOC's allegation that Hunt engaged in "unauthorized use or misuse of State property or records [in] violation of Subparagraph Number 12 of Appendix III (Third Group Offense) as outlined in the *State Personnel Board Manual of Policies, Rules and Regulations* updated January 2013," this tribunal finds that Hunt met his burden of proof/persuasion that those allegations are untrue. Accordingly, Hunt's demotion from a Correctional Supervisor (Lieutenant) to Correctional Officer IV is REVERSED and Hunt is reinstated to his position as a Correctional Supervisor. The reasons for this tribunal's decision follow.

Chapter 10, Section XX(B) of the *Mississippi State Personnel Board Policy and Procedures Manual*, effective July 1, 2013, states "An appealing party shall have the burden of proving that the reasons stated in the notice of the agency's final decision are not true or are not sufficient grounds for the action taken." Section XX(B) requires this tribunal to determine if Hunt met his burden of proof that the allegation that he transferred Marcoon and McDonald without completing a transfer for either of them on July 6 or 7, 2013, is untrue. The undisputed answer is "no." Even Hunt, at the appeal hearing, admitted he did not complete a transfer for either inmate. Hunt's failure to complete a transfer for either inmate was a violation of Standard Operating Procedure Number 16-06-02 and Hunt's violation of Standard Operating Procedure Number 16-06-02 constituted insubordination under Section 9.1(A.) of the *Mississippi State Personnel Board Policy and Procedures Manual*. The *Mississippi State Personnel Board Policy and Procedures Manual* provides that an employee who commits a Group Two offense may "be disciplined by written reprimand and/or suspension without pay not to exceed five (5) working days."

Hunt's August 8, 2013, demotion letter, does not delineate a specific punishment for Hunt's violation of the Group Number II offense of insubordination. Rather, the August 8, 2013, letter

states that "You are hereby notified that you will be demoted from your current position, Corr. Correctional Supervisor, to Correctional Officer IV, effective September 1, 2013."

The August 8 letter also states Hunt's demotion is based upon the following reasons:

On July 6th and 7th, 2013, at approximately 0800 hours, you removed two offenders from Unit 26-B Building and carried them to your home on MSP grounds to complete work on the house. These offenders were not placed on transfers to be at your house on either day which is in violation of the documented Standard Operating Procedure for offenders working at employees housing at MSP. You failed to ensure that the transfers on the offenders working at your residence were done prior to picking them up.

Insubordination, including, but not limited to, resisting management directives through actions and/or verbal exchange, and/or failure or refusal to follow supervisor's instruction, perform assigned work, or otherwise comply with applicable established written policy is a violation of Subparagraph Number 1 of Appendix II (Second Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated January 2013.

Unauthorized use or misuse of State Property or records is a violation of Subparagraph Number 12 of Appendix III (Third Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated January 2013.

Insubordination is a violation of Subparagraph Number I of Appendix II (Second Group Offense). Insubordination is not a Group III offense. Demotion is not an allowed punishment for a Group II offense. For this reason and because the MDOC did not impose a specific punishment for Hunt's Group II violation, this tribunal remands to the MDOC for it to impose punishment for the Group II violation within the parameters authorized by Section 9.1(A) of the *Mississippi State Personnel Board Policy and Procedures Manual*.

As noted previously in this Order, Hunt met his burden of proof that he did not commit a violation of Subparagraph Number 12 of Appendix III (Third Group Offense) as outlined in the *State*

Personnel Board Manual of Policies, Rules and Regulations. The reasons for this tribunal's factual finding on that issue are as follows.

So far as the record is concerned, the only State property used by Hunt in the installation of screens on his porch was the K-9 truck Hunt used to transport the offenders from their camp to Hunt's residence. Hunt's use of the K-9 truck for the inmate's transport was not an "unauthorized use" or "misuse" of State property, or of State records. Hunt's job duties required he be available twenty-four (24) hours, seven (7) days a week for duty.¹ To properly complete his job responsibility required Hunt use the K-9 vehicle and be available at all times.

Admittedly, Hunt had the inmates install screen wire on his house, a house owned by the State. This tribunal finds, however, that Hunt met his burden of proof that the installation of the screen wire was not a misuse or unauthorized use of State property or records.

Hunt testified that his installation of the screen was done because of mosquitos and flies being bad at his home. Installing a new screen to prevent the entrance of mosquitos from entering a home or its porch is not a "misuse of State property" or "unauthorized use of State property," but a practical solution which improved the livability of Hunt's home and improved State property. For this reason, this tribunal finds that Hunt's actions in installing the screen was not a "misuse" or "unauthorized use of State property or records" as alleged in Hunt's August 8, 2013, demotion letter.

This tribunal further finds, after having considered the testimony of witnesses who testified at the appeal hearing, after having considered the exhibits introduced into evidence, and having considered all relevant facts concerning the allegations against Hunt in his August 8, 2013, demotion letter, that even if Hunt's conduct in installing the screen was a misuse or unauthorized use of State

¹This tribunal understands that if Hunt was on approved leave he would not be "on duty."

property as alleged in the August 8, 2013, letter and a violation of Subparagraph 12 of Appendix III, that the punishment imposed by the MDOC was too severe for the conduct Hunt engaged in.

Hunt, on July 6 and July 7, 2013, had been a MDOC employee for over twenty years. Hunt had not engaged in previous conduct necessitating punishment by the MDOC. His supervisor, Marshall Turner, testified Hunt was a good employee. There is no evidence that Hunt was a repeat offender of MDOC rules and regulations to justify the severe punishment of being demoted from a Correctional Supervisor to that of a Correctional Officer IV. The result of such punishment was a decrease in his pay of over [REDACTED] a month – over [REDACTED] Dollars [REDACTED] a year. Such a severe reduction in Hunt's pay would have a significant detrimental effect on Hunt's retirement benefits upon his retirement and the punishment is too severe under the facts of this case. The facts of this case establish that Hunt did not in a flippant, intentional or grossly negligent manner, ignore the rules and regulations of MDOC. This tribunal finds that even if a higher tribunal disagrees with this tribunal's factual finding that Hunt did not commit a Group III violation, and finds that Hunt's action was a Group III violation, the punishment and demotion from Correctional Supervisor was too severe and that the punishment cannot be justified under the *Mississippi State Personnel Board Policy and Procedures Manual*. Specifically, this tribunal finds that Hunt met his burden of proof/persuasion that the action taken by the MDOC in demoting him to a Correctional Officer IV was "not justified for the conduct [Hunt] engaged in." See, *Mississippi State Personnel Board Policy and Procedures Manual* 10.7.21(C)(2) updated January, 2012.

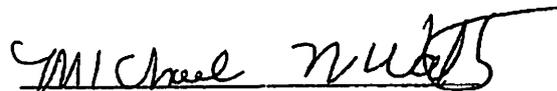
In summary, Hunt failed to meet his burden of proof/persuasion that he did not commit the Group II offense of insubordination. Because the MDOC's August 8, 2013, letter to Hunt did not

impose a punishment allowed for a Group II offense, the case is remanded to MDOC for it to impose punishment within the range allowed for a Group II offense. Hunt met his burden of proof/persuasion that he did not commit a Group III offense. The finding by MDOC that Hunt committed a Group III offense and its demotion of Hunt from the position of a Correctional Supervisor to Correctional Officer IV is reversed and Hunt is reinstated to his position as a Correctional Supervisor (Lieutenant) to the date of September 1, 2013.² The MDOC is ordered to pay Hunt, as back pay, the salary he would have received from September 1, 2013, forward had he not been demoted. Further, it is ordered that Hunt be restored to all of his retirement benefits, medical leave and personal leave he would have been entitled to had he not been erroneously demoted, provided the integrity of such benefits remain uncompromised in accordance with all applicable laws, policies, rules and regulations.

SO ORDERED, THIS THE 6 DAY OF December, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:



MICHAEL N. WATTS
Presiding Hearing Officer

²This tribunal's Order does not direct the MDOC to return Hunt to his job responsibility at the K-9 Unit. This tribunal does not have the authority to direct where State employees work.