

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

GAYLON BRADSHAW

**FILED**  
**MAY 14 2014**

APPELLANT

VS.

DOCKET NO.: 14-007

MISSISSIPPI DEPARTMENT OF WILDLIFE  
FISHERIES AND PARKS

**EMPLOYEE APPEALS BOARD**

RESPONDENT

**ORDER**

The appeal of this matter came on for hearing before Hearing Officer, B. Ray Therrell, II, on April 14, 2014 at the Mississippi State Personnel Offices in Jackson, Mississippi. The Honorable W. Douglas Mann, Jr. represented the Mississippi Department of Wildlife, Fisheries and Parks (hereafter referred to as MDWFP), and the Honorable L. Wesley Broadhead represented the Appellant, Gaylon Bradshaw (hereafter referred to as Mr. Bradshaw). Mr. Bradshaw appeals his termination of his position as a Conservation Officer IV.

On October 23, 2013, Mr. Bradshaw received a Notice of Pre-Disciplinary Conference and was suspended, with pay, pending a hearing, for the alleged offenses of a Group III, specifically alleging that Mr. Bradshaw committed a Group III 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 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.” These allegations were based solely on an affidavit in Smith County Justice Court, filed on October 23, 2013, charging him with violating MISS CODE ANN. SECTION 97-29-45, for harassment by means of electronic communication (telephone). MSPB Exhibit No. 6

On December 18, 2013, the charge of telephone harassment filed in the Smith County Justice Court was dropped/dismissed. MSPB Exhibit 4A. On January 10, 2014, based on the

recommendations of the persons at the pre-disciplinary conference, Mr. Bradshaw was separated from his termination for allegedly not being truthful during the post internal investigation of the initial Group III offense of “telephone harassment.” The February 5, 2014, letter further states that this action constitutes a Group III offense of, “an act 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.”

The rules and regulations of the Mississippi State Personal Board clearly allocates the burden of proof to the Appellant to show by a preponderance of the evidence that the reasons stated in his termination notices are not true or sufficient for the actions taken by MDWFP. Mississippi State Personnel Board Policy and Procedures Manual provides “the presiding hearing officer shall hear or receive evidence on only those reasons and allegations contained in the responding party’s final disciplinary notice to the employee of such action.” See Section 10.7.18 Mississippi State Policy & Procedures Manual.

Based on the testimony and evidence presented before the Hearing Officer, it is clear that while Mr. Bradshaw was charged with the crime of telephone harassment in the Justice Court of Smith County. This charge was dropped. Moreover, Mr. Bradshaw’s termination based on a Group III, Number 14, for failing to be “truthful” during MDWFP’s investigation was only initiated after these charges were dropped. While the Hearing Officer does not dispute the sincerity of the officers at MDWFP, their actions when terminating an employee must follow basic due process guidelines. In the present case, the record and testimony of Colonel Steve Adcock indicates Mr. Bradshaw was not given Notice of his alleged Group III offense, Number 14, of being untruthful, nor was he given an opportunity to answer the allegation of untruthfulness.

Under the rules and regulations of the Mississippi State Personal Board, Mr. Bradshaw was entitled to a written notice of a proposed disciplinary action, stating the allegations, any proposed disciplinary action, the right to conference with the agency, and an opportunity to present a defense to the allegation. Section 10.7.3 Mississippi State Policy & Procedures Manual. MDWFP failed to provide Mr. Bradshaw the due process afforded him with regards to the Group III, Number 14 offense for which he was terminated.

It is the opinion of the hearing officer, based on the record, Mr. Bradshaw was only given notice as to a Group III offenses 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 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.” Having considered the testimony of all the witnesses and exhibits introduced into evidence, the hearing officer finds that since Mr. Bradshaw’s charges were dropped in the Smith County Justice Court, and the more important, since Mr. Bradshaw did not receive due process regarding the Group II, Number 14 offense, Mr. Bradshaw has met his burden of proof.

It is therefore ordered and adjudged that the termination of Gaylon Bradshaw be reversed, and that Mr. Bradshaw shall be reinstated to his former position of Conservation Officer IV as of the date of his termination and restored to all his rights and benefits including back pay, medical leave and personal leave to the extent allowed by law. It is also ordered that Gaylon Bradshaw be restored to all of his retirement benefits he would have been entitled to had he not been erroneously terminated, provided the integrity of such benefits remain uncompromised in accordance with all applicable law, policies, rules, and regulations.

SO ORDERED, this the 8th day of May, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD



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B. RAY THERRELL, II  
Presiding Hearing Officer