

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

TIMOTHY KEITH REED

FILED

APPELLANTS

VS.

MAR 27 2014

NO. 13-065

MISSISSIPPI FORESTRY
COMMISSION

EMPLOYEE APPEALS BOARD

APPELLEE

ORDER

On November 26, 2013, Timothy Reed filed an appeal of his termination from the Mississippi Forestry Commission ("MFC"). This cause came on for hearing on February 24, 2014, in Philadelphia, Mississippi. The Appellant was represented by James A. Williams, and Richard Compere represented the MFC.

SUMMARY

The MFC employed Timothy Reed as a Forest Technician in Winston County Mississippi. On October 25, 2013, Reed received a pre termination letter from The MFC. That letter specified that Reed was charged with the Group Three, No. 11 offense of "[t]hreatening or coercing employees, supervisors, or business invitees of a State agency or office, including stalking." Reed was also charged with a Group Two No. 1 offense of "[i]nsubordination . . ." specifically, "you have again engaged in conduct whereby you threatened a fellow employee . . ." Additionally, Reed was charged with a Group Three, No. 12 offense of "[u]nauthorized use or misuse of State property. . ." and a Group Two, No. 1 offense of

"[i]nsubordination. . ." specifically, "[o]n . . . September 19, 2013 you took a bulldozer unit and did work for a private landowner . . . you did about two hours of work for the private landowner who paid you personally for the work." The pre termination letter also asserted that the use of the bulldozer violated MFC Policy Manual Rule 106 which prohibits the use of state-owned property for "personal use or gain." The pre termination letter additionally stated that Reed's actions violated Miss Code Ann. §§ 25-4-119 and 25-4-121, and MFC Policy Manual Rule 176 which requires MFC employees to comply with state ethics laws. In addition, the pre termination letter cited Reed for a Group Three, No. 6 offense of "[f]alsification of records," specifically, "you filled out the bulldozer log for the day in question, September 19, 2013, but did not include the work that was done for the private landowner; instead the only work you claimed was 'wildfire' work. . . [and] you filled out your September 19, 2013 time sheet, but the time for the 19th did not record the time the bulldozer was used for the 2 hours on the private landowners land." Finally, The MFC charged Reed with a Group Three, No. 14 offense of "[a]n act or acts of conduct occurring on or off the job which are plainly related to job performance 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 . . ."

MFC held a pre termination conference on November 6, 2013, which Reed attended. Reed also submitted a written response to the charges against him. On November 15, 2013, Reed was terminated. The termination letter cited the five Group Three offenses and the three Group Two offenses outlined in the pre termination letter.

This tribunal finds that Reed's actions did not constitute a Group Three No. 11 offense of threatening or coercing employees. However, this tribunal finds that Reed's actions did constitute a Group Two, No. 1 offense of insubordination; a Group Two, No. 6 offense of falsification of records; a Group Three, No. 12 offense of unauthorized use or misuse of State property; and a Group Three, No. 14 offense of acts of conduct of such nature that to continue Reed in the assigned position could constitute negligence in regard to the agency's duties to the public. Therefore Reed's termination is affirmed.

FINDINGS

Reed had been employed by The MFC for 22 years. His most recent position was as Technician, essentially a field supervisor, in Winston County. Reed had 22 years of experience. Reed had been the acting Forester in Winston County when the position of Forester was vacant. In January of 2013, Reed applied for the position of Forester in Winston County. Reed was allowed by the Mississippi State Personnel Board to

substitute experience for education when he applied for the position. In June of 2013, The MFC hired Justin Gentry, who is 26 years old and has a Bachelor's degree in Forestry, for the Position of Forester in Winston County. Gentry became Reed's supervisor.

Following Gentry's hire, Reed expressed his opinion to the Forest Rangers, whom he supervised, that Gentry was not needed, and was not qualified for the position of Forester. Reed made it clear that if he could have Gentry fired he believed that he would become the Winston County Forester. After Gentry mishandled the control of a forest fire, potentially placing the life of a US Forestry Service employee and MFC equipment in danger, Reed reported the incident to Gentry's supervisor. When Reed discovered that Gentry was driving a truck without the required CDL license, Reed reported the matter to Gentry's superior. In May of 2013, Reed got into a physical altercation with a fellow MFC employee and both men received letters of counsel. In the letter of counsel Reed was warned about engaging in future acts of physical violence, and about threatening and coercing his fellow employees.

In order to have The MFC perform work on private property, the property owner must complete an Authorization for Services form ("AFS") authorizing The MFC to perform the work. The AFS initiates the process for MFC to account for the manpower and equipment used for the work and

to bill for the work performed. The AFS is used to generate a computer authorization for the work and track the billing for the work done.

Sometime prior to September 19, 2013, Mr. Jerry Estes spoke to Reed about doing some bulldozer work on some of his private property. Reed agreed to do the work for Estes but no date or time was set. On September 19, 2013, Gentry was away from the office for training. Gentry had left instructions for two crews, including Reed and Ranger Jeremie Howard, to take two bulldozers to the Liberty area in Winston County to clean up some 16th section land. Reed called Estes and told him that the MFC crew would be in the area of his property, and asked if he could go ahead and do the work about which Estes had spoken to him. Instead of going to Liberty, Reed took Howard and one of the MFC bulldozers to Estes' property to clear a road on the property. Howard did not do the bulldozer work; instead he waited in the truck for Reed to finish the work. Following the completion of the job for Estes, Reed received some amount of money from Estes. Reed never reported to the Liberty worksite on September 19, 2013. However, Reed went back to the Liberty worksite, at a later date, because the work had not been properly completed.

All use of MFC Bulldozers must be recorded on a Tractor Use & Costs Record. Reed never reported that he had used the bulldozer to work on Estes' property. Reed never recorded the time that he had spent at the

Estes property on his time sheet. Reed never reported to his supervisor, Gentry that he had gone to the Estes property on September 19, 2013. When Gentry questioned Howard about the time spent on the Liberty clean up, Reed told Gentry that the entire crew had spent four hours at Liberty. Gentry became suspicious about Reed's whereabouts on that date and began an investigation of the matter. Ranger Barry Hobson told Gentry that Reed had not been at Liberty on September 19, 2013, and Howard confirmed that they had instead gone to the Estes property. After Reed became aware of the investigation, he went back to Estes and had him fill out an AFS requesting that the work on his property be done. Reed never submitted the completed AFS to Gentry. There was no evidence in the MFC computer system that the AFS had ever been used to generate a bill for the work at the Estes property.

OPINION

Reed was charged with a Group Three, No. II offense of "[t]hreatening or coercing employees, supervisors, or business invitees of a State agency or office, including stalking." There was evidence that Reed did not respect his supervisor, Gentry, and that he was working to have Gentry terminated or moved. Other than statements that if he got rid of Gentry he would run Winston County, which were clearly no more than braggadocio, there was no evidence that Reed intimidated or coerced

his fellow employees. This tribunal finds that in this regard Reed did not commit a Group Three, No. 11 Offense of threatening or coercing his fellow employees or a Group Two No. 1 offense of insubordination.

There is ample evidence that Reed committed one Group Two offense of Insubordination, in that he did not follow Gentry's instruction to work on the Liberty property and instead went to the Estes property to work.¹ Reed also committed the Group Three, No. 12 offense of unauthorized use of State property in that he used the MFC bulldozer to work on Estes property without prior authorization or any apparent intention to obtain payment to the State for that work. Reed additionally committed the Group Three, No 6 offense of falsification of records by failing to include the time he spend working on the Estes property on his time records and failing to record the use of the bulldozer at the Estes property on the Tractor Use & Costs Record. Finally, Reed committed the Group Three, No. 14 Offense of an act of conduct plainly related to job performance 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-- in that his use of state property to perform work for private individuals without reimbursement to the state undermines citizens confidence in the public integrity of The MFC's operations. The allowable

¹ Reed may also have committed two additional Group Two offenses of Insubordination by violating The MFC Policy Rules 106 and 176. However those Rules were not admitted into evidence and this tribunal makes no finding with regard to Reed's violation of those rules or the ethics statutes.

punishment for the accumulation of two Group Two Reprimands within a year or the Commission of one Group Three Offense is dismissal. For the foregoing reasons Reed's dismissal is affirmed.

SO ORDERED THIS THE 27th DAY OF March, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY:



INGRID DAVE WILLIAMS
Hearing Officer