

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

ANN DREKA SCOTT

FILED

APPELLANT

MAY 14 2014

VS.

DOCKET NO. 13-066

EMPLOYEE APPEALS BOARD

MISSISSIPPI DEPARTMENT OF CORRECTIONS

RESPONDENT

ORDER

Before the Mississippi Employee Appeals Board is the appeal of Ann Dreka Scott ("Scott" or "Appellant") for being demoted by the Mississippi Department of Corrections ("MDOC"). A hearing was held on Scott's appeal on April 18, 2014. Scott represented herself. 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.

By letter dated November 6, 2013, Scott was demoted from Correctional Officer II to Correctional Officer I with an effective date of December 1, 2013. Scott's demotion letter provided the following reasons for her demotion:

On September 21, 2013 you reported to Correctional Commander Anthony Porter by telephone that your state issued hand gun was missing from your residence on MSP grounds. According to your incident report dated September 20, 2013, you stated that you discovered the weapon missing on September 20, 2013. When Commander Porter questioned you concerning the missing weapon, you stated that you had placed the weapon under the couch cushion and that you thought Tiffany Jackson, your ex roommate, had taken the weapon. You failed to give notification of the missing state weapon in a timely manner and did not have the weapon secured in a locking mechanism as required by MDOC standard operating procedures.

An 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 or to other State employees is a violation of Subparagraph Number 14 of Appendix III (Third Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated July 2013.

A breach of agency security or confidentiality is a violation of Subparagraph Number 18 of Appendix III (Third Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated July 2013.

Mississippi State Employee's Handbook, July 2013 edition, states that the commission of one Group III Offense may be disciplined by the agency with a written reprimand and/or may result in suspension without pay for up to thirty working days, demotion, or dismissal.

The facts in this matter are not complicated and there are no material disputed facts. Appellant Scott admitted at her appeal hearing that the allegations set forth in her demotion letter of November 6, 2013 were accurate. Scott did not deny that her state weapon was not secured by a locking mechanism as required by the MDOC's standard operating procedures, nor did she deny that she did not provide notification of her missing weapon until September 21, 2013.

Specifically, the facts developed at Scott's hearing were that Scott left her residence at Parchman, Mississippi, on September 20, 2013, at approximately 1757 hours. At approximately 1759 hours, Scott called the front gate of the Mississippi State Penitentiary at Parchman, Mississippi, and spoke to Officer Hinds. Scott advised Officer Hinds that Scott's ex-roommate would be coming by Scott's residence to pick up certain belongings. Scott then left the Mississippi State Penitentiary at Parchman en route to Grenada, Mississippi. At approximately 2158 hours, Scott and her friend, Nurse McKinney, arrived back at Scott's house at the Mississippi State Penitentiary. At that time, Scott realized that her State issued weapon was missing from the area she had left it. Scott testified

before leaving for Grenada that she hid her State issued weapon in a portion of her couch and it was missing upon her return home.

Scott admitted that she realized on September 20, 2013, at approximately 2158 hours that her State issued weapon was missing. However, she did not notify her supervisor of the missing weapon until the next day, September 21, 2013.

The MDOC had in effect at all material times, and including September 20, 2013, and September 21, 2013, Standard Operating Procedure 08-03-03. Standard Operating Procedure 08-03-03 provides at line 17, "All weapons retained on institutional property will be secured by a locking mechanism." Further, Standard Operating Procedure 08-03-03 provides at lines 23-24, "Employees living on institutional property will immediately report any weapon that is stolen to the Superintendent or designee."

On September 20, 2013, Scott was living on MDOC institutional property. Scott did not on September 20, 2013, immediately notify the superintendent or his designee of the missing weapon, but waited until the next day to advise Captain Porter. Scott's failure to secure her State issued weapon in a locking mechanism and to immediately notify her superiors when she discovered the weapon missing was a breach of security.

Given the seriousness of the charges – that a weapon was missing from her house – Scott should have immediately contacted her appropriate superior so security procedures could have been instituted to try to locate the weapon. Scott thought that her ex-roommate had taken the weapon and although that may have been a reasonable thought, Scott should have also considered the fact that someone such as an inmate had taken the weapon.

Scott's conduct in not properly securing her weapon with a locking mechanism and not immediately advising her superior of the missing weapon was an act occurring on or off the job which was plainly related to her job performance and of such a nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duty to the public or other State employees and was a subparagraph 14 Appendix III (Third Group Offense) violation as outlined in the *State Personnel Board Manual of Policies, Rules and Regulations Updated July, 2013*.

State Personnel Board Manual of Policies, Rules and Regulations Updated July, 2013, provides that a breach of agency security or confidentiality is a Group Three, Subparagraph 18 Offense. Further, the Mississippi State Employee's Handbook, July, 2013, edition further provides that 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 working days, demotion or dismissal.

As stated *supra*, Scott does not deny the facts upon which her demotion is based are true. Rather, Scott contends that her demotion was too severe a punishment and she asks this tribunal to reduce that punishment.

The rules governing appeals of the Mississippi Employee Appeals Board, Section XXIV(B) provides "if the responding agency has acted in accordance with the published policies, rules and regulations of the MSPB and if the personnel action taken by the responding agency is allowed under said policy, rules and regulations the order shall not alter the action taken by the agency, including, but not limited to the compensation paid to the employee."

In the present case, Scott has not met her burden of proof that she did not commit a Group Three violation. Since a Group Three violation may be disciplined by the MDOC by demoting Scott, Scott's punishment for her violation of a Group Three offense is within the rules prescribed by the Mississippi State Personnel Board. For this reason, Scott's demotion from Correctional Officer II to Correctional Officer I is AFFIRMED. Scott's appeal is dismissed, with prejudice.

SO ORDERED, THIS THE 13 DAY OF May, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: Michael N. Watts
MICHAEL N. WATTS
Presiding Hearing Officer