

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

SHARONA CAUSLEY

FILED

APPELLANT

VS.

DEC 05 2014

DOCKET NO. 14-043

MISSISSIPPI DEPARTMENT OF CORRECTIONS

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER

Before the Mississippi Employee Appeals Board is the appeal of ShaRona Causley (“Causley” or “Appellant”) for being terminated by the Mississippi Department of Corrections (“MDOC”). A hearing was held on Causley’s appeal on November 7, 2014. Causley represented herself. The MDOC was represented by David K. 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. Causley was hired by the MDOC on April 2, 2012.
2. During all material times, Causley’s duty station with the MDOC was the Mississippi State Penitentiary, Parchman, Mississippi. Causley held the position of Correctional Officer I.
3. The MDOC had in effect on March 17, 2014, Staff Call-In Guidelines which set forth the MDOC’s guidelines for staff call-ins and the MDOC’s practices for excessive call-ins.
4. The MDOC Staff Call-In Guidelines provided the following disciplinary steps for employees who violated the March 17, 2014, call-in guidelines:
 - Three (3) call-ins (unscheduled leave) or three (3) late for duty or any combination of the two within any sixty (60) day period will result in a written counseling session.

- An additional three (3) call-ins and/or tardiness within any sixty (60) day period after receiving a written counseling session, will result in a written reprimand.
- An additional three (3) call-ins and/or tardiness within any sixty (60) day period after receiving a written reprimand, will result in an administrative hearing for a three (3) day suspension from duty without pay.
- An additional three (3) call-ins and/or tardiness within any sixty (60) day period after receiving a three (3) day suspension without pay, will result in an administrative hearing for termination.
- The sixty (60) day period shall begin with an unscheduled call-in. If sixty (60) days pass with no more call-ins, the next call-in will be counted as number one.

5. Causley called into work and did not report to work on the following dates: March 29, 2014, April 11, 2014, April 25, 2014, and May 11, 2014.

6. Causley, by calling and not reporting to work on March 29, 2014, April 11, 2014, and April 25, 2014, called in three (3) times within sixty (60) days within the meaning of the MDOC's March 17, 2014, "Staff Call-In Guidelines."

7. Causley was issued a written reprimand dated February 12, 2014, for violation of Subparagraph Number 1 of Appendix I (First Group Offense) as outlined in the *State Personnel Board Manual of Policies, Rules and Regulations updated July 2013* (reported to work late three (3) times within a sixty (60) day period).

8. Causley did not appeal her February 12, 2014, written reprimand to the MEAB.

9. Causley was issued a written reprimand dated January 1, 2014, for violation of Subparagraph Number 2 of Appendix III (Third Group Offense) as outlined in the *State*

Personnel Board Manual of Policies, Rules and Regulations updated July 2013 (called in on November 8, 9, 2013 and December 19, 2013).

10. Causley did not appeal her receipt of her January 1, 2014, written reprimand to the MEAB.

11. Causley was issued a written reprimand dated August 23, 2013, for 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 July 2013* (did not conduct nor assist in the shakedown assignment at Unit 26 A Building). Causley did not appeal her receipt of her August 23, 2013, written reprimand to the MEAB.

12. Causley was issued a written reprimand dated July 22, 2013, for 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 July 2013* (refused to do kitchen logs on July 22, 2013).

13. Causley did not appeal her July 22, 2013, written reprimand to the MEAB.

14. On or about September 19, 2013, Causley was provided written counseling for calling in three (3) times in a ninety (90) day period.¹

15. Causley's calling in and not reporting to work on March 29, 2014, April 11, 2014, and May 25, 2014, constituted calling in within a sixty (60) day time period and was a violation of the MDOC's March 17, 2014, Staff Call-In Guidelines and constituted the Group Two offense

¹Causley denied at her appeal hearing that she received or had knowledge of the written counseling session of September 19, 2013. Lt. King, a superior of Causley, testified Causley did receive the written counseling on September 19, 2013, and that Causley refused to sign the written counseling form. This tribunal finds Lt. King's testimony more credible than Causley's and finds as a fact that Causley received the September 19, 2013, written counseling.

of “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 July 2013.”

16. Causley was terminated by letter effective August 28, 2014. Causley’s termination letter set forth the following reasons for her termination:

1. You called in and did not report for duty on the following days:

January 27, 2014 - called in sick²
February 27 2014 - called in child sick
March 29, 2014 - called in (spoke with Capt. Belton)
April 11, 2014 - called in child sick
April 25, 2014 - called in child sick
May 11, 2014 - called in child sick

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 July 2013.

Prior discipline which was used as a basis of accumulation of offenses in disciplinary actions, include:

1. You were issued a written reprimand dated February 12, 2014 for violation of Subparagraph Number 1 of Appendix

²This tribunal did not, in reaching its decision in this case, consider Causley’s January 27, 2014, and February 27, 2014, call ins as a ground for termination because more than 60 days occurred between January 27, 2014, and March 29, 2014. Sixty-one (61) days elapsed between January 27, 2014, and March 29, 2014.

I (First Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated July 2013 (reported to work late three times within a sixty day period).

2. You were issued a written reprimand dated January 1, 2014 for violation of Subparagraph Number 2 of Appendix III (Third Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated July 2013 (called in on November 8, 9, 2013 and December 19, 2013).
3. You were issued a written reprimand dated August 23, 2013 for 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 July 2013 (did not conduct nor assist in the shakedown assignment at Unit 26A Building).
4. You were issued a written reprimand dated July 22, 2013 for 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 July 2013 (refused to do kitchen logs on July 22, 2013).

Mississippi State Employee's Handbook, July 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.

CONCLUSIONS OF LAW

The burden of proof is on Causley to prove that the allegations upon which her August 25, 2014, termination was based were either not true, or if true, that the conduct Causley engaged in was not sufficient grounds for her termination. *See, Mississippi State Personnel Board Policy and Procedures Manual*, effective date 7/1/2014, Chapter 10, Section 20(B). Also, *see*

Richmond v. Mississippi Department of Human Services, 745 So. 2d 254 (Miss. 1999). In

Richmond 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 Appeals 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 employee 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.

The Mississippi State Personnel Board Policy and Procedures Manual provides that a

Group Two offense includes:

1. 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.

See, Mississippi State Personnel Board Policy and Procedures Manual 9(B)(1).

Did Causley meet her burden of proof that the allegations in her August 25, 2014, letter that she was insubordinate for calling in on March 29, 2014, April 11, 2014, April 25, 2014, and May 11, 2014, were untrue? This tribunal, having considered all the exhibits introduced into evidence, the testimony of all witnesses, and after having evaluated the credibility of each witness, finds as a fact that Causley failed to meet her burden of proof that the allegations in her August 25, 2014, letter were untrue. This is so for the following reasons.

Causley, prior to her call ins and not reporting for duty on the dates of March 29, 2014, April 11, 2014, April 25, 2014, and May 11, 2014, had been provided with written counseling

addressing her calling in and failure to come to work. In addition, Causley had also received a Group III, Subparagraph Number 2 written reprimand on January 1, 2014, for chronic absenteeism. Causley's continued calling in and failing to report to work on the dates set forth in her August 25, 2014, termination letter after receiving written counseling, and a written reprimand for not properly reporting to work was an act of insubordination, a Group II offense as defined in the *State Personnel Board Manual of Policies, Rules and Regulations updated July 2013*.

The Mississippi State Personnel Board Policy and Procedures Manual (MSPBPM) also provides that "accumulation of two (2) Group Two written reprimands within a one (1) year period may result in demotion or dismissal." *Id. See*, MSPBPM § 9.1(B).

The record reflects that Causley did not accumulate two Group Two offenses within a one (1) year period. Causley received a Group Two offense written reprimand on August 23, 2013, and was terminated for a Group Two offense on August 25, 2014, two days after August 23, 2014. Thus, Causley's Group Two offense occurred within a year and two days, not within one year.

However, Causley accumulated a Group III offense on January 1, 2014. Causley's January 1, 2014, Third Group offense is more severe than a Group Two offense and the accumulation by Causley of the January 1, 2014, Group Three offense with the August 25, 2014, Group Two offense was a sufficient basis for the MDOC's termination of Causley.

The sole remaining issue is whether Causley met her burden of proof that the MDOC's termination of her was too severe for the conduct Causley engaged in. Having considered all evidence in the record, this tribunal finds as a fact that Causley failed to meet her burden of proof

on that issue. This is because Causley had accumulated a Group One offense, a Group Two offense and a Group Three offense within one year. Further, whereas here, a responding agency “acts in accordance with the published policies, rules and regulations of MSPB and the personnel action taken by the responding agency is allowed under said policy the [MEAB] order shall not alter the action taken by the agency” See, MSPBPM § 10.24(B).

Causley’s termination is affirmed and Causley’s appeal is dismissed, with prejudice.

SO ORDERED, THIS THE 5 DAY OF DECEMBER, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD

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