

FULL BOARD OF THE MISSISSIPPI EMPLOYEE APPEALS BOARD

HALBERT WILLIAMS

**FILED**

APPELLANT

VS.

**JUN 23 2015**

NO.: 15-002

MISSISSIPPI DEPARTMENT OF CORRECTIONS

**EMPLOYEE APPEALS BOARD**

APPELLEE

ORDER OF MEAB BOARD, EN BANC

The Mississippi Department of Corrections ("MDOC" or "Appellee") filed a request for review to the Mississippi Employee Appeals Board ("MEAB), *en banc*, appealing the Order entered by Hearing Officer Ingrid Williams, reinstating the Appellant, Halbert Williams ("Williams" or "Appellant") to his position with the MDOC. The MEAB, *en banc*, having reviewed the record in this matter, affirms and modifies the decision of Hearing Officer Williams. The reasons for the MEAB, *en banc*, opinion are set forth below:

FACTS

Williams was employed as a correctional officer with the rank of Captain with the MDOC, working at the Central Mississippi Correctional Facility (CMCF). Williams has been employed at MDOC for approximately 23 years. On January 1, 2013, Williams was injured attempting to control a fight involving multiple inmates. As a result of his injury, Williams went on leave and eventually received workers compensation benefits. Due to his alleged behavior during the incident, Williams was terminated. He appealed his termination to the MEAB. On March 24, 2014, the MEAB reinstated him to his position as Captain with MDOC. At the time of his reinstatement, Williams was on leave as a result of his injuries and could not return to work immediately. On May 30, 2014, MDOC received Williams' release to return to work with restrictions.

On June 2, 2014, MDOC concluded Williams' restrictions could not be accommodated for the position of Captain. On June 3, 2014, MDOC informed Williams that MDOC could not accommodate his restrictions, and requested him to contact them if he had further questions. Subsequently, on December 31, 2014, Williams was terminated because it was determined that he had restrictions which prohibited him from performing his job related requirements and the essential functions of his position. Furthermore, MDOC found there was reasonable accommodation which MDOC could make for Williams without causing undue hardship to MDOC operations.

On January 12, 2015, Williams appealed his termination to the MEAB, claiming that he was discriminated against on the basis of his disability. An appeal hearing was held before Hearing Officer Ingrid Williams on March 31, 2015. Williams was represented by the Honorable Dexter Woodberry, and the Honorable David Scott represented the MDOC. During the March 31, 2015 hearing, exhibits were introduced into evidence and testimony was taken of witnesses. On April 17, 2015, after considering the testimony of all the witnesses and having considered all exhibits introduced into evidence, Hearing Officer Williams found as follows:

To establish a Prima facie discrimination claim under the Americans with Disabilities Act a plaintiff must prove: ( 1) that he has a disability; (2) that he was qualified for the job he held;(3) and that he was subject to an adverse employment decision on account of his disability. Equal Employment Opportunity Commission v. LHC Group, Inc., 773 F.3d 688 (5th Cir. 2014). Furthermore, the employee must show that if he cannot perform the essential functions of the job that "a reasonable accommodation of his disability would have enabled him to perform the essential functions of the job." EEOC v. LHC, 773 F.3d 688, at 696. The ADA defines "reasonable accommodation" to include reassignment to a vacant position, and the regulations governing the ADA make clear that reassignment is the appropriate accommodation in some instances. 42 USC § 12111 (9) (B), 29 CFR § 1630.9 and Appendix to Part 1630-Interpretive Guidance on Title I of the Americans with

Disabilities Act. The Employer is not required to make a reasonable accommodation if it would be an undue hardship. 42 USC § 12112 (5) (A).

It was undisputed that Williams has a disability; that he had been qualified for the job of Captain prior to his injury and consequent disability; and that he could not perform the essential functions of the job of Captain at CMCF. Therefore, MDOC was required to provide a reasonable accommodation for Williams. The ADA specifically states that a reasonable accommodation includes reassignment, unless such an accommodation is an undue hardship for the Employer.

There was no evidence that MDOC tried to reassign Williams. It is apparent that MDOC failed to engage in the ADA mandated process with Williams to consider reasonable accommodation. 29 CFR § 1630.9 and Appendix to Part 1630- Interpretive Guidance on Title I of the Americans with Disabilities Act Under the ADA. Once the employee presents a request for accommodation, the employer is required to engage in [an] interactive process so that together they can determine what reasonable accommodations might be available. EEOC v. LHC, 773 F.3d 688, at 699 Williams v. MDOC, 15-002 citing E.E.O.C. v. Chevron Phillips Chem. Co., 570 F.3d 606 at 622. Given that MDOC failed to consider reassignment of Williams they could not show and did not present any evidence that such a reassignment would be an undue hardship for MDOC.

Hearing Officer Williams found Williams proved that he was terminated based on his disability and that MDOC failed to attempt to accommodate that disability by engaging in any process to attempt to accommodate his disability by reassignment. Hearing Officer Williams reinstated Williams to his previous position, as Captain with CMCF/MDOC, and awarded back pay from June 2, 2014 the date the he would have returned to duty, and all of his concurrent employee rights and benefits were restored. Further, the Hearing Officer ordered MDOC to comply with ADA law and regulations with regard to Williams' disability.

MDOC timely filed an appeal the MEAB Full Board.

### OPINION

MEAB Rule 18 A. provides that “The purpose of the hearing is to ascertain the truth.”

MEAB Rule 20. B. states that “[a]n 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. There is no requirement that the agency support their decision to terminate an employee with “substantial evidence.” The burden is on the employee to show that reasons for the agency’s decision are not true or are not sufficient grounds for the action taken.

The hearing Officer was correct to apply the Americans with Disabilities Act to the Williams' termination. In order to establish a discrimination claim under the Americans with Disabilities Act a plaintiff must prove: ( 1) that he has a disability; (2) that he was qualified for the job he held;(3) and that he was subject to an adverse employment decision on account of his disability. *Equal Employment Opportunity Commission v. LHC Group, Inc.*, 773 F.3d 688 (5th Cir. 2014).

Williams had worked for approximately twenty-three (23) years with MDOC, and was qualified and acting in the position of Captain at the time of his injury. Williams acknowledged that he could not perform the job of Captain with his medical restrictions, and it was only due to his work related injury that he could not perform the essential functions of the job of Captain, and was restricted to certain limitations at the time of his termination.

Williams was disabled, but wanted to work. The record is clear that Williams contacted MDOC after receiving the June 3, 2014, notice that he could not be accommodated. He asked MDOC to reassign him to another position which would accommodate his restrictions. Williams also spoke with MDOC Personnel Officer, Chrystal Galloway, and asked to be placed in another position. In addition, Williams reviewed and saw several MDOC positions on line that he thought he could perform with his medical restrictions. There was no evidence that MDOC attempted to place Williams in another position that could accommodate his restrictions.

The MEAB agrees with Hearing Officer Williams that it was MDOC's obligation to provide a reasonable accommodation for Williams by accommodating Williams' medical restrictions. Moreover, it is clear that there were some positions available he could perform with

his medical restrictions, but MDOC failed to address his restrictions or reassigned him to another position. MDOC failed to engage in the ADA mandated process, explained by the Hearing Officer, to interact with Williams to consider those positions. Moreover, there is no evidence to support that MDOC interacted with Williams with regard to reasonable accommodation or reassignment after he requested accommodation.

As earlier stated, once “the employee presents a request for accommodation, the employer is required to engage in [an] interactive process so that together they can determine what reasonable accommodations might be available.” After receiving Williams’ request for accommodation or transfer, it was the MDOC’s obligation to not only discuss possible accommodations/reassignments with Williams. Moreover, if MDOC could not comply with Williams’ request, it was the obligation of MDOC to show that the accommodation/reassignment could not be performed, and would have resulted in undue hardship for the MDOC. MDOC failed to provide any evidence to support accommodation or reassignment would have been a hardship. There is nothing in the record to support a burden or undue hardship on MDOC.

The MEAB affirms the decision of Hearing Officer Williams that Williams meet his burden of proof to show that his termination was based on his disability, and that MDOC failed to accommodate or reassign Williams. The MEAB affirms Williams’ reinstatement to his position.

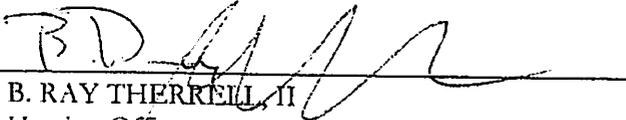
After careful review, the MEAB does hereby modify the Hearing Officer’s Order awarding back pay from June 2, 2014, and hereby awards Williams back pay from December 31, 2014, since Williams was not terminated until that date, and from all accounts had all his employment rights and benefits until his termination on December 31, 2014.

Having carefully reviewed the testimony and evidence, the MEAB, *en banc*, hereby adopts and affirms Hearing Officer Williams’ Findings of Fact and Opinion in the above styled matter as it relates to the reinstatement of Williams, but modifies, and awards Williams back pay only from Williams vs. MDOC, 15-002, Full Board 5.

December 31, 2014, along with all of his concurrent employee rights and benefits being restored. Furthermore, the Full MEAB Board orders the MDOC to comply with ADA law and regulations with regard to Williams' disability by creating an interactive dialogue with Williams to determine a reasonable accommodation or reassignment for his disability.

**SO ORDERED** this the 23rd day of June, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD  
FULL BOARD

BY:   
B. RAY THERRELL, II  
Hearing Officer