

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

GREGORY PAYTON

FILED
JUN 11 2015

APPELLANT

VS.

CAUSE NO.: 15-006

EMPLOYEE APPEALS BOARD

SPECIALIZED TREATMENT FACILITY
MISSISSIPPI DEPARTMENT OF MENTAL HEALTH

APPELLEE

ORDER

On February 24, 2015, the Appellant, Gregory Payton ("Payton" or "Appellant") filed an appeal to the Mississippi Employee Appeals Board ("MEAB), appealing his termination from employment with the Specialized Treatment Facility/Mississippi Department of Mental Health ("MDMH" or "Appellee"). On May 12, 2015, this cause came on for hearing before Hearing Officer, B. Ray Therrell, II, in Gulfport, Mississippi. Payton appeared pro se. Gene Rowzee, Jr. represented the MDMH.

FACTS

Payton was employed by the MDMH as a Vocational Training Instructor. On or about February 4, 2015, Payton was sent a Pre-Separation Notice, informing him of his possible separation from his employment. By letter, dated February 13, 2015, Payton terminated from his employment for committing two (2) Group III Offenses for refusing to leave the facility when repeatedly directed to by security and the administrator of the facility and for disrupting a children's mental health residence by impersonating a doctor over the phone. In addition to the above offenses, Payton had received prior disciplinary actions, including several offenses during his employment.

On February 24, 2015, Payton appealed his termination to the MEAB and a hearing was held on May 12, 2015. During the May 12, 2015, hearing, exhibits were introduced into evidence and testimony was taken of several witnesses, including the Appellant.

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.

Under Chapter 7 of the Mississippi State Employee Handbook, committing the 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 or other state employees,” may result in termination of employment. See *Mississippi State Employee Handbook*. Chapter 7.1.

Having reviewed the testimony and evidence with regard to the first Group III charge of that the Appellant became hostile and refused to leave the facility when directed to do so by the administrator of the facility, the hearing officer finds the Appellant’s actions do constitute a Group III No. 14 Offense under Chapter 7 of the Mississippi State Employee Handbook. Several witnesses testified Appellant was asked to leave, but failed to follow those instructions. Moreover, the Appellant admitted that he should have left the facility when asked to do so. Whether the actions could be viewed hostile defers from each witness. His actions did create concern for the administration of the facility and it is clear he refused to leave when asked. It is the opinion of the

Hearing Officer that by remaining at the facility he created a situation that was unnecessary and could affect MDMH's duty to the public and its employees.

With regard to the second offense on the Separation Letter, MDMH alleges the Appellant violated the workplace violence, harassment, or courtesy policies of the agency by impersonating Dr. Vyverberg, a doctor at the facility. After reviewing the record, hearing officer finds there is insufficient evidence to support the allegation that the Appellant committed this offense. While there was testimony that the Appellant liked to kid around and may have called other employees kidding around, the testimony does not indicate that any of his actions constituted a willful violence, harassing, or non-courteous behavior in violation of the MDMH policy.

After considering the testimony of all the witnesses, including the Appellant, and having considered all exhibits introduced into evidence, the Hearing Officer reverses the Group III Offense for disrupting a children's mental health residence by impersonating a doctor over the phone, but affirms the MDMH's Group III offense against Payton for refusing to leave the facility when repeatedly directed to by security and the administrator of the facility, and further finding Payton's actions constituted a No. 14 offense under Chapter 7, Section 7.1 of the Mississippi State Employee Handbook, being "[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 or other state employees," The Appellant's termination is hereby affirmed.

SO ORDERED this the 11th day of June, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD



B. RAY THERRELL, II
Hearing Officer