

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

ANGELA POLLARD

FILED

APPELLANT

V.

JUN 02 2015

DOCKET NO. 15-010

MISSISSIPPI DEPARTMENT OF CORRECTIONS

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER

On March 20, 2015, Correctional Officer Angela Pollard (hereafter "Ms. Pollard" or "Pollard") filed a Notice of Appeal with the Mississippi Employee Appeals Board. Ms. Pollard's Notice of Appeal consisted of two grievances. One was that she was a Correctional Officer III, but believed she was being paid as a Correctional Officer II. Ms. Pollard's other grievance centered around a March 10, 2015, letter from Superintendent of the Mississippi State Penitentiary at Parchman, Earnest Lee, which suspended Ms. Pollard for five (5) days for alleged insubordination.

Before proof was taken on evidentiary issues, Ms. Pollard was asked if she still contended she was being paid as a Correctional Officer II instead of a Correctional Officer III position. Ms. Pollard stated that her appeal was not meant to include a claim of underpayment and that she was not pursuing on appeal any grievance alleging she was being paid as a Correctional Officer II as opposed to a Correctional Officer III. Based on this Stipulation by Ms. Pollard, the only issue remaining before this tribunal is whether or not Ms. Pollard met her burden of proof that she did not commit insubordination as alleged by Earnest Lee in his March 10, 2015, suspension from duty letter to Ms. Pollard, or if she did commit an act of insubordination, was her five day suspension too severe for the conduct she engaged in.

Superintendent Lee's March 10, 2015, letter to Ms. Pollard suspending her without pay for the five (5) day time period of March 11, 2015, through March 17, 2015, stated as follows:

Your suspension is based upon the following reason(s):

1. You gave a correspondence to Mr. Lester Williams, Training Director, on January 26, 2015 to give to Superintendent Earnest Lee, to discuss with the officers in the 40 Hours Refresher Class Training on Tuesday, January 27, 2015. In the correspondence, you stated "Why you letting them people talk about taking \$50 monthly from us we already don't make nothing what our personal life have to do with this place nothing. Well have you heard from your good friend Christopher Epps if so how is he doing and why he's not on the wall of shame. And do you think he's gonna get any time. And Ronald Reagon the same people that try to embarrass others look what happens to your friend." You also stated in the correspondence "I glad we got a new commissioner (white man) may-be we would get a raise thank you...."

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 2014.

The burden of proof is on Ms. Pollard to prove that the insubordination allegation as alleged by Superintendent Lee is untrue. *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).

Only Ms. Pollard and Superintendent Lee testified at the appeal hearing. Three documents were admitted into evidence as Exhibits 1 through 3. Having considered the testimony of Superintendent Earnest Lee and Ms. Pollard, having gauged their credibility and having fully considered Exhibits 1 through 3, this tribunal finds as a fact that Ms. Pollard failed to meet her burden of proof that the allegation that she was insubordinate as set forth in Superintendent Earnest Lee's March 10, 2015, letter to her is untrue. Accordingly, this tribunal affirms the finding as set forth in Ms. Pollard's March 10, 2015, suspension letter that Ms. Pollard was insubordinate. The reason for this decision is set forth below.

Superintendent Lee testified that the Mississippi Department of Corrections (hereafter "MDOC") has a written policy that requires all of its employees to act professionally. Ms. Pollard did not refute Superintendent Lee's testimony at the appeal hearing. In Superintendent Lee's opinion, the correspondence that Ms. Pollard gave to Mr. Lester Williams, the Training Director on June 26, 2015, was unprofessional both in its tone and in its content.

Ms. Pollard testified at the appeal hearing that the genesis of the language upon which her suspension was based stemmed from a request by Mr. Lester Williams, the Training Director for the Mississippi State Penitentiary. Mr. Williams told all officers in the 40 Hour Refresher Class scheduled for January 27, 2015, to put in writing "any questions" that they had that they would like Superintendent Lee to address at a meeting the next day. Ms. Pollard's contention at her appeal hearing was that she did not intend for her questions to be unprofessional. Ms. Pollard said that her impression from Mr. Williams' instruction was that she and other correctional officers could ask "any" question they wanted to ask Superintendent Lee and he would respond to the question.

Superintendent Lee testified that the tone of the letter, especially Ms. Pollard's comments concerning Commissioner Christopher Epps and Ronald Reagon, were unprofessional. For example, Ms. Pollard's reference to the new Superintendent being white – as opposed to former Commissioner Epps being black conveyed the impression that Pollard thought a white Superintendent could do a better job than a black Superintendent.¹ In regard to Pollard's question, "Well have you heard from your good friend Christopher Epps if so how is he doing and why he not on the wall of shame. And do you think he's gonna get any time" "and Ronald Reagon the same people that try to embarrass others look what happens to your friend" this tribunal finds those comments were not sincere questions by Pollard. Both of the above comments refer to Epps and Ragon as Superintended Lee's "good friend" or "your friend." The inference this tribunal draws from Pollard's "good friend" and "your friend" remarks to Superintendent Lee is that Pollard was unprofessional in her comments concerning her perceived relationship between Superintendent Lee and Mr. Epps and Mr. Reagon rather than a sincere question about Epps' punishment for his federal conviction or why Reagon was no longer employed by the MDOC. Further, this tribunal finds that Pollard's unprofessional comments violated the MDOC's written policy and constituted an act of insubordination within Subparagraph Number 1, of Appendix II (Second Group Offense) as outlined in the *State Personnel Board Manual of Policies, Rules and Regulations Updated July 2014*.

Having determined that Ms. Pollard failed to meet her burden of proof that she was not insubordinate, the sole remaining question is whether the conduct Ms. Pollard engaged in was insufficient for the MDOC's five day suspension of Ms. Pollard without pay. Chapter 9.1(B) of

¹Ms. Pollard's race is African American.

the *Mississippi State Board Policy & Procedure Manual* provides that an employee who commits a Group Two offense may be suspended not to exceed five (5) working days. Here, the MDOC's suspension of Ms. Pollard was within the punishment authorized by Chapter 9.1(B). This tribunal cannot, on the record before it, state that Pollard met her burden of proof that her five day suspension was too severe for her conduct. Accordingly, Ms. Pollard's five day suspension without pay for insubordination is affirmed. Her appeal to the Mississippi Employee Appeals Board is dismissed, with prejudice.

SO ORDERED, THIS THE 5 DAY OF June, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:


MICHAEL N. WATTS
Presiding Hearing Officer