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other statutory exemptions or court order.**

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

GREGORY PAYTON

FILED

APPELLANT

VS.

AUG 19 2015

NO. 15-006

**SPECIALIZED TREATMENT FACILITY
MISSISSIPPI DEPARTMENT OF MENTAL HEALTH**

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER

Gregory Payton (hereafter "Mr. Payton") was terminated from his position from the Specialized Treatment Facility, a subsidiary of the Mississippi Department of Mental Health. Mr. Payton appealed his termination to the Mississippi Employee Appeals Board on February 24, 2015. Mr. Payton was terminated based on the allegations that he had committed two (2) Group III offenses according to the *Rules and Regulations of the State of Mississippi Employee Handbook* and the *Addendum* thereto of the Department of Mental Health. Specifically, it was alleged that Mr. Payton committed the following offenses:

1. During the course of an investigation (toward the end of the work-day on January 29, 2015) you became increasingly hostile to the point that you were asked to leave the STF campus by the Program Director, you repeatedly refused to leave, resulting in you being placed on administrative leave (effective January 30, 2015) with pay.
2. The results of the investigation found that you impersonated Dr. Bryan Vyverberg and caused a disruption to Specialized Treatment Facility's therapeutic milieu.

That predicated upon the above, according to the rules and regulations of the State of Mississippi Employee Handbook and the Addendum thereto of the Department of Mental Health, you have committed an act (item 1) 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; and an act (item 2) of flagrant

violation of DMH workplace violence, workplace harassment, or courtesy policies.

In addition, to the above action, a review of your personnel file and the following was considered when reaching this decision:

- 12/16/14 [REDACTED]
- 09/24/14 [REDACTED]
- 06/12-14 [REDACTED]
- 06/12/14 [REDACTED]
- 06/12/14 [REDACTED]
- 11/12/13 [REDACTED]
- 9/11/13 [REDACTED]
- 9/11/13 [REDACTED]
- 05/31/13 [REDACTED]
- 04/17/12 [REDACTED]

A hearing was held on Mr. Payton's appeal before Hearing Officer Ray Therrell. After hearing testimony of all witnesses and considering all exhibits admitted into evidence, Hearing Officer Therrell ruled that Mr. Payton failed to meet his burden of proof that he did not become hostile and failed to leave the STF campus as directed to do by the Program Director. Hearing Officer Therrell also found that such conduct was "an act or acts of conduct occurring on or off the job which [were] plainly related to job performance and [were] of such a nature that to continue the employee [Payton] in the assigned position could constitute negligence in regard to the agency's duty to the public or to the other state employees," a Group III offense. Hearing Officer Therrell found that Mr. Payton met his burden of proof that Mr. Payton did not impersonate Dr. Vyverberg.

Aggrieved by Hearing Officer Therrell's decision that Mr. Payton failed to meet his burden of proof that he did not commit the Group III offenses as alleged, Mr. Payton appealed Hearing Officer Therrell's Order to the Full Employee Appeals Board. Specialized Treatment Facility/Mississippi Department of Mental Health did not cross-appeal Hearing Officer Therrell's finding that Mr. Payton met his burden of proof that he did not impersonate Dr. Vyverberg. Accordingly, the only issue before the Mississippi Employee Appeals Board, *en banc*, is whether Hearing Officer Therrell's finding that Mr. Payton failed to meet his burden of proof that he did not commit the Group III offense, as alleged, is incorrect.

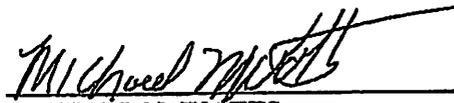
Hearing Officer Therrell heard testimony from a number of witnesses including Mr. Payton. Hearing Officer Therrell also reviewed various exhibits and after hearing the testimony of all witnesses and judging their demeanor and credibility, found as a fact that the allegation that Mr. Payton failed to leave the workplace as requested and that he created a disruption was true.

Hearing Officer Therrell further found that Mr. Payton's failure to leave the treatment facility after being requested to do so was "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." The findings of fact of the hearing officer will be affirmed if there is substantiated evidence to support his or her findings. *See, Cox v. Mississippi Department of Corrections*, 969 So. 2d 900 (Miss. App. 2007).

Hearing Officer Therrell was the "trier of fact as well as the Judge of the witnesses' credibility." *Miss. Bureau of Narcotics v. Stacy*, 817 So. 2d 523, 26 (Miss. 2002). In this case, there is sufficient and credible evidence in the record to support Hearing Officer Therrell's finding that Mr. Payton failed to leave the workplace after requested to do, that Mr. Payton became hostile and that such conduct by Mr. Payton was "an act or acts of conduct occurring on or off the job which [were] plainly related to job performance and [were] of such a nature that to continue the employee [Payton] in the assigned position could constitute negligence in regard to the agency's duty to the public or to the other state employees." Because Hearing Officer Therrell concluded that Mr. Payton failed to meet his burden of proof and prove that the allegation against him was untrue, and because there is substantial evidence supporting Hearing Officer Therrell's opinion, this tribunal is required to affirm Mr. Payton's termination.

For all the foregoing reasons, the Mississippi Employee Appeals Board, *en banc*, affirms Hearing Officer Therrell's June 11, 2015, Order affirming the termination of Gregory Payton from the Specialized Treatment Facility/Mississippi Department of Mental Health. Mr. Payton's appeal to the Mississippi Employee Appeals Board is dismissed, with prejudice.

SO ORDERED, on this the 19 day of August, 2015.



MICHAEL N. WATTS
For the Mississippi Employees
Appeals Board, *en banc*