

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

JEFFREY GUY DAVIS

FILED
JUN 10 2016

APPELLANT

VS.

DOCKET NO. 15-049

MISSISSIPPI DEPARTMENT OF REVENUE

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER

Jeffrey Guy Davis ("Mr. Davis"), on September 30, 2015, received a written reprimand for insubordination. A written reprimand is a Group Two offense pursuant to the *Mississippi State Employee Handbook*. Following receipt of the September 30, 2015, written reprimand, Mr. Davis filed an inter-agency grievance of the reprimand. Mr. Davis' inter-agency grievance was denied.

Mr. Davis timely appealed the written reprimand to the Mississippi Employee Appeals Board ("MEAB") on December 3, 2015. Hearings were held on Mr. Davis' appeal on March 16, 2016, and May 26, 2016. For the reasons set forth below, this tribunal affirms the Mississippi Department of Revenue's ("MDOR") September 30, 2015, written reprimand to Mr. Davis.

LAW

Mr. Davis has the burden of proof in this matter. *See, Mississippi State Personnel Board Policy and Procedures Manual*, effective date 7/1/2015, 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.

Having considered all of the testimony of the witnesses in this case, having considered all the exhibits introduced into evidence, having evaluated the credibility of all witnesses, and after having drawn certain inferences from the testimony of witnesses and the exhibits introduced into evidence, this tribunal finds as a fact that Mr. Davis did not meet his burden of proof. The reasons for this tribunal's decision follow.

Mr. Davis' written reprimand was a Group Two reprimand for insubordination. It was alleged by Mr. Davis' supervisor, Kristin Gann, that Mr. Davis failed to delete taxpayer information from his computer at the conclusion of Mr. Davis' work day in violation of DOR's policies and procedures. As a result, it was also alleged that Mr. Davis lost significant completed work.

The MDOR policy and procedure Mr. Davis allegedly violated was that Mr. Davis failed to do the following:

At the end of each day, after work papers have been checked back into MARS from the mobile device(s), the device downloads and trash folders shall be purged, as follows:

- Open Windows Explorer.
- Click the Downloads location.
- Press CTRL-A to select all items in the Downloads location, and press DELETE to delete the items.
- Close the Windows Explorer.
- On the Desktop, RIGHT CLICK the Recycle Bin and select Empty Recycle Bin

See page 4, MDOR "Use of Communication and Computing Technologies Policies and Procedures," Amended 11/20/2014 (hereafter "policy").

On December 1, 2014, Mr. Davis acknowledged, in writing, that he received a copy of the policy and procedure as set forth above. Although certain testimony was adduced at the evidentiary

hearings that there had been confusion concerning whether it was proper for MDOR employees to retain up to three taxpayer's information on their computers and that Mr. Davis' computer "froze up" on September 15, 2015, this tribunal finds that the testimony concerning the propriety of retaining the three taxpayer's information and Mr. Davis' computer "freezing up" is not the dispositive issue(s) before this tribunal. The dispositive issue(s) are whether Mr. Davis failed to follow established MDOR procedure directing that Mr. Davis, at the end of his work day, delete items in his downloads folder and trash folder, as directed by MDOR policy. The second question is if Mr. Davis failed to follow that procedure, was he insubordinate? This tribunal finds that Mr. Davis did not follow established MDOR policy and that his failure constituted insubordination within the meaning of 9.1.B(1) of the *Mississippi State Personnel Board Policy and Procedures Manual*. This is so for the following reasons.

The MDOR's policy requiring Mr. Davis, and other MDOR employees, to delete their downloads folder and trash folder at the conclusion of work each day is not ambiguous. Simply stated, Mr. Davis was required, at the end of each work day, to purge his device's downloads folder and his device's trash folder in the way directed by MDOR. Mr. Davis admittedly did not always purge his device's downloads folder or trash folder at the conclusion of the work day. During cross-examination, Mr. Davis was asked the following question by MDOR's attorney:

Q: Are you testifying you deleted your download folder every day?

A. No.

Q. You did not follow that policy every day, correct?

A. Correct.

Having found that Mr. Davis violated the established MDOR policy concerning purging of his device's download folder and trash folder, the next question is whether Mr. Davis' conduct constituted insubordination within the meaning of the *Mississippi State Personnel Board Policy and Procedures Manual*.

The term "insubordination," as defined by 9.1.B. of the *Mississippi State Personnel Board Policy and Procedures Manual* states as follows:

...

Group Two includes the following offenses:

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.

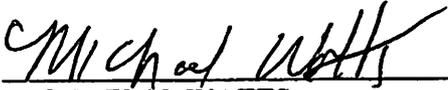
Mr. Davis' failure to follow MDOR's written established policy requiring that he purge his downloads folder and trash folder at the end of each work day constituted a failure to "... comply with applicable established written policy" and was the commission of the Group Two, No. 1 offense of insubordination.

The sole remaining question is whether MDOR's written reprimand was too severe for the conduct Mr. Davis engaged in. The commission of a Group Two offense can subject the employee to a suspension of five days or written reprimand. *See*, 9.1B "Group Two Offenses." The written reprimand issued to Mr. Davis by the MDOR is a punishment allowed for a Group Two offense. This tribunal does not, under the facts of this case, find that the punishment of a written reprimand

was too severe for Mr. Davis' failure to follow policy, especially since Mr. Davis had been admonished on March 17, 2015, for having two items in his device's downloads folder and two items in his device's recycle bin, in violation of the policy.

MDOR's written reprimand to Mr. Davis is affirmed. Mr. Davis' appeal is dismissed, with prejudice.

SO ORDERED, THIS THE 10 DAY OF JUNE, 2016.


MICHAEL N. WATTS
Chief Hearing Officer