

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-SA-01312-COA

**MISSISSIPPI DEPARTMENT OF PUBLIC
SAFETY**

APPELLANT

v.

RICHARD TODD COX

APPELLEE

DATE OF JUDGMENT:	10/07/2025
TRIAL JUDGE:	HON. JAMES D. BELL
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT, FIRST JUDICIAL DISTRICT
ATTORNEY FOR APPELLANT:	BETHANY BRANTLEY JOHNSON
ATTORNEY FOR APPELLEE:	DENNIS L. HORN
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES
DISPOSITION:	REVERSED AND REMANDED - 10/20/2026
MOTION FOR REHEARING FILED:	

BEFORE CARLTON, P.J., WEDDLE AND LASSITTER ST. PÉ, JJ.

CARLTON, P.J., FOR THE COURT:

¶1. The Mississippi Department of Public Safety (DPS) terminated Richard Todd Cox’s employment with the Mississippi Highway Safety Patrol. He appealed his termination to the Employee Appeals Board (EAB). The EAB reversed his termination and reinstated his employment. DPS petitioned the circuit court for certiorari review, which affirmed the EAB’s decision to reinstate Cox. Finding that the EAB’s decision was arbitrary and lacked necessary findings, we reverse and remand for further proceedings consistent with this opinion.

FACTS

¶2. Richard Todd Cox was employed as a state trooper with the Mississippi Highway

Safety Patrol. In June 2018, DPS provided Cox a “Narrative Statement of Charges.” The statement outlined three instances that DPS thought merited disciplinary proceedings.

¶3. DPS alleged that Cox violated Group II and Group III of the Mississippi State Personnel Board Offenses and DPS Policies. Termination is authorized discipline for Group III offenses. Specifically, DPS charged Cox with counts of Group II offenses:

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.

Cox was also charged with counts of Group III offenses:

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 other State employees.

I. 2010 Incident with Kevin Burns

¶4. The first Group III incident occurred in 2010 when Cox went to Kevin Burns’s residence and accused Burns of having an affair with Cox’s wife thirteen years prior. DPS alleged that Cox “pushed his way into the home and brutally assaulted him causing substantial facial injuries. When Mr. Burns told Cpl. Cox he was going to call the law, Cpl. Cox said[,] ‘Mother ***** I am the law.’” Cox later testified,

I said, Man, I can’t believe you. And when I did, he grabbed my arm. We went down to the ground, kind of simultaneously put each other in a headlock and was wrestling around and pretty much did that until at a stalemate There was never a punch thrown by him. There was never a punch thrown by me.

Cox stated that he was “verbally counseled,” and therefore disciplined, for this incident. Cox

did not remember signing a Narrative Statement of Charges.

II. 2017 Incident with Kelsey Adams

¶5. The second Group III incident occurred in May 2017 after DPS found that Cox violated DPS General Orders and committed a Group III violation for “having an inappropriate relationship with a fellow trooper’s wife.” As a result, Cox was transferred to a different troop and removed from the SWAT team. At a later hearing, Will Adams, the fellow trooper, testified that his wife at the time, Kelsey, and Cox had a physical affair. Cox and Kelsey, on the other hand, testified that the affair was emotional and non-sexual. Cox testified, though, that he told other troopers about the sexual nature of his relationship with Kelsey. When Cox was asked if he was admitting to behavior that violated a DPS order, he responded, “Admitted it from day one.”

III. 2018 Incident with Christi Cox

¶6. Finally, another Group III incident arose in May 2018. The Rankin County Chancery Court granted a temporary restraining order (TRO) against Cox based on his being “physically and verbally abusive towards his wife” and his stalking her. Cox’s wife, Christi, testified at the TRO hearing that after they discussed divorce, Cox “grabbed [her] by the throat and choked [her] and said, ‘I will f***ing kill you if you break this family up and divorce me.’” In the TRO proceeding, Christi further stated that Cox followed her to her attorney’s office and told her he would follow her all day. After being served with the complaint for divorce, Cox told Christi that “the only way this would end is by [Cox] putting a bullet in [Christi’s] head.” When Christi stated that she was going to call 911, Cox told her

that officers would not arrive fast enough. Cox further told Christi that he would kill her lawyer and his family as well. Christi's testimony from the TRO proceedings was submitted by DPS as evidence in the EAB appeal hearing.

¶7. Regarding these allegations, Cox stated to the EAB that Christi was "influenced to lie under oath and rescinded the restraining order two days after it was granted due to evidence proving she had lied."¹

* * * * *

¶8. DPS asserted that Cox "displayed a total disregard for established MSPB and departmental policy" and "displayed an unacceptable and troubling pattern of behavior that is unbecoming of a law enforcement officer." DPS held a disciplinary hearing before a hearing officer. The hearing officer "determined a founded basis" for the violations and offenses and terminated Cox's employment with DPS.

¶9. Cox appealed his termination to the EAB. During a hearing before the EAB, DPS introduced a polygraph examination report wherein an examiner asked Cox, (1) "Did you tell Christi you would shoot her?"; (2) "Did you ever physically harm Christi?"; and (3) "Did you make any threats about Christi's attorney?" Cox answered "no" to each question. The report indicated that "Cox was not being truthful[.]" The EAB found that because the examiner was not called to testify and was not subject to cross-examination by Cox, and because "Mississippi Code [Annotated section] 73-29-47 disallows polygraph examinations to be introduced or admitted as evidence in a court of law[.]" it could not consider the polygraph

¹ This language was included in Cox's statement of facts in his notice of appeal to the EAB, not in his sworn testimony at the hearing.

report or its findings.²

¶10. The EAB held that Cox “met his burden to establish that DPS’s discipline was unjustified.” The EAB reversed the decision of DPS and reinstated Cox as a state trooper.

¶11. DPS petitioned the Hinds County Circuit Court for certiorari review, which the court granted.³ Finding that the decision was based upon substantial evidence and was not arbitrary or capricious, the circuit court affirmed the judgment of the EAB. DPS then appealed to the supreme court, which assigned the appeal to this Court.⁴

STANDARD OF REVIEW

¶12. Mississippi Code Annotated section 25-9-131(1) (Rev. 2024) states, “Any employee

² We note that “the rules of practice, procedure and evidence, formally observed in courts of law, are relaxed in proceedings before administrative agencies.” *McGowan v. Miss. State Oil & Gas Bd.*, 604 So. 2d 312, 317-18 (Miss. 1992).

In *Evans v. DeRidder Mun. Fire*, 815 So. 2d 61, 68 (La. 2002), the Louisiana Supreme Court held, after first finding no reason for barring their admission, that results of a polygraph test were admissible in an administrative proceeding as competent evidence. Here, it was permissible for the EAB to consider the polygraph examination report due to the relaxed rules in administrative proceedings. However, the hearing officer had discretion to exclude the evidence as set forth in Rule 9.17 of the employee handbook.

Since we reverse on other grounds, we decline to further address whether there was an abuse of discretion in excluding the polygraph examination report.

³ “[N]o statute allows an employer to appeal a decision of the EAB[.]” *Miss. Div. of Medicaid v. Alliance Health Ctr.*, 174 So. 3d 254, 263 (¶24) (Miss. 2015). However, “[c]ertiorari is available for judicial review of EAB decisions” pursuant to Mississippi Code Annotated section 11-51-93 (Rev. 2019). *Bertucci v. Miss. Dep’t of Corr.*, 597 So. 2d 643, 646 (Miss. 1992). Additionally, “certiorari review under Section 11-51-95 is discretionary with the circuit court. To secure certiorari review, one must petition the circuit court and make a showing of good cause.” *Alliance Health Ctr.*, 174 So. 3d at 263 (¶25).

⁴ In its appellate brief, DPS references an additional Group III incident that allegedly occurred between Cox and his current wife. However, our supreme court “has long held that [we] cannot consider that which is not in the record.” *Stone v. State*, 94 So. 3d 1078, 1082 (¶11) (Miss. 2012).

in the state service may appeal his dismissal or other action adversely affecting his employment status to the employee appeals board created herein. The proceedings before the employee appeals board shall be de novo[.]” Miss. Code Ann. § 25-9-131(1). Mississippi Code Annotated section 25-9-132(2) (Rev. 2024) then provides that “[a]ny employee aggrieved by a final decision of the employee appeals board shall be entitled to judicial review[.]” Further,

(2) The scope of review of the circuit court . . . shall be limited to a review of the record made before the employee appeals board or hearing officer to determine if the action of the employee appeals board is unlawful for the reason that it was:

- (a) Not supported by any substantial evidence;
- (b) Arbitrary or capricious; or
- (c) In violation of some statutory or constitutional right of the employee.

Miss. Code Ann. § 25-9-132(2).

¶13. Similarly, this Court “must affirm the agency decision if the decision was (1) supported by substantial evidence; (2) not arbitrary or capricious; (3) within the scope or power of the agency; and (4) not a violation of the aggrieved party’s constitutional or statutory rights.” *Ray v. Miss. Dep’t of Pub. Safety*, 172 So. 3d 182, 187 (¶15) (Miss. 2015). “We need to find substantial evidence underlying the [EAB’s] decision to reinstate the employee, even if there was also substantial evidence to support the earlier termination.” *Miss. Dep’t of Corr. v. Smith*, 883 So. 2d 124, 129 (¶15) (Miss. Ct. App. 2004). A reviewing court does not reweigh the evidence or substitute its judgment for that of the EAB. *Ray*, 172 So. 3d at 187-88 (¶¶15, 17).

¶14. “Substantial evidence exists so long as there is evidence that a reasonable mind might

accept as sufficient to support a conclusion.” *Id.* “The reviewing court is not authorized to substitute its judgment for that of the agency where there is substantial (that is, more than a scintilla of) evidence to support the finding.” *Id.* (quotation marks omitted) (quoting *Miss. Pub. Serv. Comm’n v. Merchants Truck Line Inc.*, 598 So. 2d 778, 782 (Miss. 1992)). “Moreover, there is a rebuttable presumption in favor of the agency decision[,] and the burden of proof is on the party challenging that decision.” *Id.* (quotation marks omitted) (quoting *Montalvo v. Miss. State Bd. of Med. Licensure*, 671 So. 2d 53, 56 (Miss. 1996)).

DISCUSSION

¶15. On appeal, DPS argues that the EAB (1) ignored substantial evidence that DPS relied upon when making the decision to terminate Cox and gave improper weight to Cox’s testimony and (2) erred in holding that the polygraph examination report had to be disregarded. We find the first assignment of error dispositive, and therefore, we decline to rule on DPS’s assignment of error pertaining to the exclusion of the polygraph examination results.

¶16. DPS asserts that “the administrative judge refused to take into consideration any documentary evidence presented by DPS” and that the “opinion is based primarily upon testimony by Cox of his personal belief.” DPS further contends that the EAB “reweighed the evidence and failed to give sufficient deference to the agency’s findings.”

¶17. “The EAB is the trier of fact as well as the judge of the witnesses’ credibility.” *Ray*, 172 So. 3d at 188 (¶20) (quotation marks omitted) (quoting *Bynum v. Miss. Dep’t of Educ.*, 906 So. 2d 81, 90 (¶14) (Miss. Ct. App. 2004)). Before the EAB, Cox had “the burden of

proving that the reasons stated in the notice of the agency’s formal disciplinary action (i) [were] not true or (ii) [were] not sufficient grounds for the action taken” under Rule 9.18(B) of the employee handbook.

¶18. Cox testified at the hearing before the EAB and denied assaulting Burns or Christi. On the other hand, neither Burns nor Christi testified. Rather than call Christi as a witness, DPS submitted the transcript of Christi’s testimony from the TRO hearing. DPS sought to introduce the polygraph examination report but did not call the examiner to testify.

¶19. Ultimately, the EAB found that “Cox’s testimony [was] believable” and “that he did not brutally assault Burns as DPS alleges.” DPS pointed to this incident in an attempt to demonstrate that Cox “displayed an unacceptable and troubling pattern of behavior[,]” but the EAB noted in its order that “[t]he time gap from 2010 to 2018 hardly fits into a troubling pattern.” Additionally, the EAB determined that Cox “rebutted allegations that he was physically or verbally abusive towards his wife Christ[i], that he stalked her or that he threatened her attorney.” As a result, the EAB held that Cox “rebutted the agency presumption and established that his termination was not justified.”

¶20. The EAB’s determination that Cox was a credible witness and that he did not assault Burns or abuse Christi falls squarely within its role as fact-finder. There is substantial evidence in the record before us to support these express findings by the EAB.

¶21. However, the EAB’s analysis fails to address Cox’s 2017 affair with Kelsey, the fellow trooper’s wife. Importantly, in Cox’s testimony before the EAB, he admitted to his relationship with Kelsey and to his discussing the sexual nature of the relationship with

fellow officers. The EAB heard testimony from Cox, Kelsey, and fellow trooper Adams regarding the incident. The EAB did not determine that the charge was untrue and did not consider whether Cox's conduct constituted a sufficient basis for discipline. This behavior, if true, would constitute a Group III offense, authorizing termination as discipline.

¶22. As noted, Cox admitted to the conduct arising from the second charge, the 2017 affair with Kelsey. Thus, in accordance with Rule 9.18(B) of the employee handbook, the EAB was required to address whether Cox's actions constituted a sufficient reason to support DPS's termination of his employment. The EAB failed to perform this analysis. This admitted Group III violation was an independent reason that qualified for termination. Because of the EAB's lack of findings regarding this incident, we are unable to determine whether the EAB's decision is supported by substantial evidence. We therefore find that the order of the EAB is arbitrary, and we reverse and remand the case to the EAB for further findings and analysis consistent with this opinion.

CONCLUSION

¶23. As set forth above, Cox admitted to behavior that constituted a Group III offense, an independent reason for his termination. The EAB, however, failed to address whether this conduct constituted a sufficient reason to support DPS's termination of Cox's employment. We find the EAB's decision is arbitrary and, therefore, reverse it and the circuit court's order affirming the EAB's decision and remand to the EAB for further proceedings consistent with this opinion.

¶24. **REVERSED AND REMANDED.**

**BARNES, C.J., WILSON, P.J., McDONALD, LAWRENCE, EMFINGER,
WEDDLE AND LASSITTER ST. PÉ, JJ., CONCUR. McCARTY, J., CONCURS IN
PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION.
WESTBROOKS, J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION.**