

IN THE COURT OF APPEALS 03/12/96
OF THE
STATE OF MISSISSIPPI
NO. 95-CC-00387 COA

SIDNEY HAVARD

APPELLANT

v.

**MISSISSIPPI DEPARTMENT OF CORRECTIONS AND THE MISSISSIPPI EMPLOYEE
APPEALS BOARD**

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. GRAY EVANS

COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

RICHARD A. OAKES

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JOSEPH A. GOFF AND MELBA DIXON

NATURE OF THE CASE: TERMINATION OF STATE EMPLOYEE

TRIAL COURT DISPOSITION: TERMINATION AFFIRMED

BEFORE BRIDGES, P.J., BARBER, McMILLIN, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

This case involves the termination of an employee of the Mississippi State Penitentiary at Parchman. We find that the issue on appeal is without merit and accordingly affirm the circuit court's order.

FACTS

Sidney Havard had been a state employee at Parchman since 1987. In September 1993, the penitentiary superintendent, Ed Hargett, received an anonymous letter stating that Havard had been arrested in Greenwood for DUI and that he had previously had several other confrontations with the law. An internal investigation led to substantiation of charges, fines, and convictions for DUI, driving with a suspended license, and improper lane usage dating back to March, 1990. The investigation eventually culminated into an administrative review hearing. The hearing officer heard testimony from Havard and other witnesses and recommended to Hargett that Havard be suspended for five days, volunteer to attend an alcohol treatment program, and be placed on probation for one year. Hargett reviewed the recommendation but decided to terminate Havard.

Havard appealed his termination to the Employee Appeals Board. A board hearing officer conducted a de novo hearing and subsequently entered an order affirming Havard's termination. An en banc review by the board upheld the hearing officer's decision. Havard appealed the board's affirmance to the Sunflower County Circuit Court, which affirmed the board's decision. He now appeals the circuit court's order affirming his termination.

ANALYSIS

I. WERE HAVARD'S CONSTITUTIONAL RIGHTS TO DUE PROCESS VIOLATED WHEN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS TERMINATED HIS EMPLOYMENT WITHOUT GIVING HIM THE CHANCE TO RESPOND TO THE OFFICIAL WHO MADE THE DECISION TO TERMINATE?

Havard argues that he was denied an opportunity to orally rebut the reasons for his termination to the official who made the decision. He contends that Hargett's termination summarily rejected the original hearing officer's recommendation and disregarded any explanation Havard may have had to offer. Havard also believes that Hargett used factually incorrect information in reviewing the charges against him. He argues that, like the municipal civil service system, the state personnel system requires giving an employee the chance to respond orally to the official actually having the responsibility of termination. Finally, he argues that his due process rights were violated and requests a reversal of the circuit court's order, reinstatement with full back pay and benefits, and attorney's fees under 42 U.S.C. §§ 1983 and 1988 (1995).

Mississippi statutory law addresses the prerequisites to dismissal affecting employment status of state employees. An employee must be given written notice of the allegations and a hearing within the department as specified in the rules and regulations of the state personnel board complying with due process of law. Miss. Code Ann. § 25-9-127 (1972). Moreover regarding this procedure, a state employee must be given: (1) the opportunity for a conference with the appointing authority or

designated representative and (2) the chance to respond in writing prior to any adverse action. Mississippi State Personnel Board Policy and Procedures Manual § 9.20 (1994).

In the present pretermination hearing, Aaron Jagers was the hearing officer and designated representative for the Mississippi Department of Corrections. His job was strictly to make recommendations in employee discipline matters. The Department of Corrections sent Havard written notice of the charges to be discussed at the administrative review hearing. The notice informed him of his rights to respond in writing to the charges and to call and cross-examine witnesses at the hearing. Jagers presided at the hearing and allowed Havard to orally respond to the charges. Jagers subsequently sent his recommendations to Hargett. Hargett was the appointing authority for the state penitentiary and had the authority to terminate Department of Corrections employees assigned to the Parchman facility. Hargett ultimately decided to terminate Havard after review of Jager's recommendations.

We believe that the Department of Corrections properly followed the rules and procedures designed to address employee discipline in this case. In addition, it followed the proper appellate procedures after conducting the initial hearing. The procedures manual clearly allows for the appointment of a representative to conduct the discipline hearings. Hargett, as the appointing authority and final decision-maker, properly heard Havard's oral responses to the DUI, and related charges through the memorandum from Jager. The Department of Corrections clearly provided Havard with all of his due process rights by complying with statutory law and the policy and procedures of the state personnel board prior and subsequent to terminating Havard.

The charges in the original hearing notice were considered Group III, Number 10 violations within the personnel board policies and procedures manual. This group includes criminal convictions for a felony or a misdemeanor while employed by the state. Mississippi State Personnel Board Policy and Procedures Manual § 9.10(c)(10) (1989). Conduct within this group is serious and may be disciplined by written reprimand and may result in suspension without pay for up to thirty days, demotion, or dismissal. *Id.* The hearing notice to Havard, and the information within the recommendation from Jager to Hargett that followed the actual hearing, failed to reflect the fact that a previous disciplinary suspension of Havard for thirty days had actually been reduced to three days. However, Hargett testified that his decision to terminate Havard was based mainly on the current charges. He stated that the prior charges and the related information indicating a thirty-day, and not a three-day, suspension had little if any impact on his decision to terminate Havard. We believe that Hargett not only had the authority to terminate Havard, but that he made his decision based on sufficient knowledge of the current Group III charges against Havard.

Havard also argues that the municipal civil service employee discipline system requires that an employee be given the opportunity to respond to any charges orally before the official having the responsibility of termination. He believes that this concept should be applied to his case as well. Mississippi statutory law states that a municipal civil service employee must be given written notice of the reasons for termination and notice of rights to respond in writing to these reasons and to orally present his case before the official charged with the power of making the decision to terminate. Miss. Code Ann. § 21-31-23 (1972). However, the state employee dismissal procedural system addressed in section 25-9-127 of the Mississippi Code requires written notice of the charges and a hearing *within the department* as specified in the rules and regulations of the state personnel board. The

legislature has clearly chosen by statute to address the municipal civil service system employee pre-disciplinary procedures separate and apart from the procedure for the state employee system. We believe that no requirement exists in the State employee's system mandating that the appointing authority must actually hear a given matter.

We believe that no due process violations occurred here. The Department of Corrections provided Havard with every right to which he was entitled under both the statute and the rules and regulations of the state personnel board manual. We therefore affirm the circuit court's order affirming Havard's termination.

THE JUDGMENT OF THE CIRCUIT COURT OF SUNFLOWER COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND SOUTHWICK, JJ., CONCUR. FRAISER, C.J., NOT PARTICIPATING.