

IN THE SUPREME COURT OF MISSISSIPPI

COPY

EMMA COX  
APPELLANT,

v.

MS DEPARTMENT OF CORRECTIONS  
RESPONDANT.

Case No.: 2006-SA-01611

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On Appeal from the Circuit Court of Sunflower County

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BRIEF OF APPELLANT

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ORAL ARGUMENT NOT REQUESTED

**IN THE SUPREME COURT OF MISSISSIPPI**

**EMMA COX**

**APPELLANT,**

**v.**

**MISSISSIPPI DEPARTMENT OF  
CORRECTIONS**

**RESPONDENT**

**Case No.: 2006-SA-01611**

**CERTIFICATION OF INTERESTED PARTIES**

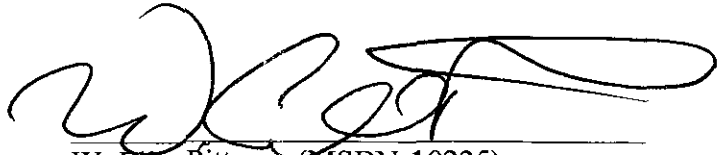
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

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I, W. Ellis Pittman, do hereby certify, to the best of knowledge, information, and belief, that these are the only persons having an interest in the outcome of this appeal.

THIS, the 16<sup>th</sup> day of April, 2007.

A handwritten signature in black ink, appearing to read 'W. Ellis Pittman', written over a horizontal line.

W. Ellis Pittman (MSBN 10225)  
*Attorney for Appellant*

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## STATEMENT OF ISSUES

1. WHETHER THE EAB'S DECISION TO SUSTAIN MS. COX'S TERMINATION WITHOUT THE BENEFIT OF A COMPLETE TRANSCRIPT WAS DONE IN VIOLATION OF ARTICLE THREE, SECTION FOURTEEN OF THE CONSTITUTION OF THE STATE OF MISSISSIPPI AND THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, CREATING A CONSTITUTIONAL FACT WHEREAS THIS COURT MAY REVIEW THE EAB'S ACTIONS UNDER THE INDEPENDENT JUDGMENT TEST.
2. WHETHER THE EAB'S DECISION TO AFFIRM MS. COX'S TERMINATION FAILED TO MEET THE REQUIREMENTS OF THE "SUBSTANTIAL EVIDENCE TEST" SO AS TO VIOLATE FUNDAMENTAL PROCEDURAL PRINCIPLES OF ADMINISTRATIVE LAW AND INSTINCTIVELY MAKING THE EAB'S DECISION ARBITRARY AND CAPRICIOUS, THEREBY ENTITLING THIS COURT NOT TO GIVE DEFERENTIAL TREATMENT TO THE EAB'S PRIOR DECISION TO AFFIRM MS. COX'S TERMINATION.

### **STATEMENT OF THE CASE**

Respondent contends that while Ms. Cox was conducting yard call on January 11, 2005, she was observed with her eyes closed for approximately five (5) seconds by the newly appointed Deputy Warden John Rogers (hereinafter "Rogers"). Appellant denies that her eyes were closed or that she was inattentive. Appellant had slipped and injured herself at work less than three days before the aforementioned incident (January 8, 2005), and she was merely positing herself on a crate in order to gain some relief from her painful injuries when approached by Rogers. Respondent had a policy that anytime a staff member appeared to be asleep while on duty, the first offense would result in a written reprimand. Other employees had been observed appearing to be asleep on duty and received no disciplinary action. The Respondent justified treating those other employees differently on the basis that they were on camera when they were inattentive.

In addition, the full EAB did not have the benefit of a full and complete transcript when affirming the decision to terminate Ms. Cox's employment. For purposes of this appeal, Appellant challenges the EAB's decision to affirm her termination, raising factual and legal questions for the Court's determination.

### **STATEMENT OF THE FACTS**

At the time of her termination, Ms. Cox was fifty-two (52) years of age with over seventeen (17) years of service to the Mississippi Department of Corrections (hereinafter "MDOC"). During her lengthy employment with MDOC, there have been numerous employees found to be inattentive, as defined by MDOC policy, while on duty. Yet, Ms. Cox is the only employee that has been terminated for violating the aforementioned policy. In fact, it is uncontroverted that after Ms. Cox's termination, more specifically on or about April 24, 2005, MDOC received documented, recorded proof of several officers' inattentiveness as video footage revealed several officers who appeared to be asleep

while on duty at Unit 32. See Exhibit 6. Neither employee was terminated or even suspended from duty. In fact, they were disciplined pursuant to a directive from Rogers dated March 21, 2005. According to the Memo, Ms. Cox should have received a written reprimand for the infraction that she allegedly committed. See Exhibit 7.

We would like to point out from the outset that during her seventeen (17) years of employment with MDÖC, Ms. Cox's employment record was free from blemishes as she had been an exemplary employee. The incident which gave rise to her wrongful termination occurred on January 11, 2005, as Ms. Cox was assigned to yard call detail at Unit 32. In order to give a complete picture of what transpired during the brief encounter between Ms. Cox and Rogers, we must note that on January 8, 2005, Ms. Cox was in an accident while on duty at Unit 32. See Exhibit 2. Despite the injuries that Ms. Cox received in the accident, she reported to duty while under her doctor's care. See Exhibit 3. While conducting yard call on January 11, 2005, Ms. Cox began experiencing pain in her back and legs that caused her to position herself on a crate that was nearby so that she could monitor the activities of the offenders on the yard.

Officer Marilyn Hemphill had just departed from the yard, speaking with Ms. Cox, just prior to Rogers arriving on the yard. In fact, Ms. Cox had just received radio traffic that Rogers was in the building and was performing an inspection. Officer Hemphill testified that she had just left the yard area, speaking with Ms. Cox, less than a minute before Rogers went on the yard and that Ms. Cox was fully alert. Rogers approached Ms. Cox and asked her several questions and then returned to the interior of the Unit. Rogers did a report requesting that action be taken on January 13, 2005, (See Exhibit 1) on the basis that Ms. Cox did not respond when he first walked on the yard.



Of course, Ms. Cox has stated that her back was to Rogers when he arrived on the yard.  
See Exhibit 1.

On January 18, 2005, Commander Porter prepared a request for an Administrative Review Hearing to Warden Earnest Lee. Superintendent Lawrence Kelly sent Ms. Cox Notice of an Administrative Review Hearing on February 4, 2005, with a scheduled hearing date of February 24, 2005, before the hearing officer Connie Ayers. Ms. Ayers recommended that Ms. Cox be terminated for appearing to be sleep. Ms. Cox appealed the termination, and on April 7, 2005, Ms. Cox's employment was terminated. After Ms. Cox appealed her termination, the agency learned that Ms. Cox knew how other employees had been treated and a new memo was issued on May 25, 2005, superceding the memo attached as Exhibit 7. See Exhibit 8. It is worthy to mention that the memo attached as Exhibit 8 was issued just two weeks before the hearing before the EAB. A hearing was held before hearing officer Falton O. Mason, Jr., who entered an order on June 13, 2005, sustaining the action by M.D.O.C. Ms. Cox, acting pro se, timely appeal hearing officer Mason's decision to the Full Board.

The Full Board entered its Order upholding hearing officer Mason's decision in all respects despite the facts that a full and complete transcript did not exist. Thereafter, Ms. Cox properly appealed the decision of the Full Board to the Circuit Court of Sunflower County pursuant to EAB Rule 27. Ms. Cox filed her Motion for a New Trial with the Circuit Court of February 15, 2006. Feeling aggrieved by the Circuit Court's ruling to sustain the decision of MDOC to terminate her employment and affirming the decision of the EAB, Ms. Cox has perfected this appeal.

### **STANDARD OF REVIEW**

Generally, an appeal from an administrative body's findings and orders is subjected to limited review. Pub. Employees' Ret. Sys. v. Howard, 905 So. 2d 1279, 1284 (Miss. 2005). And the decision shall go undisturbed unless there is a showing that the decision was not supported by substantial evidence, arbitrary, capricious, beyond the power of the lower authority to make, or violated some statutory or constitutional right of the complaining party. Id. (citing Pub. Employees' Ret. Sys. v. Marquez, 774 So. 2d 421, 425 (Miss. 2000)); see also, URCCC 5.03. Review, in this regard, is simply on the record. However, where an appeal from an administrative body raises questions of law, review is not limited to the record, but is *de novo*. McGowan v. Miss. State Oil and Gas Bd., 604 So. 2d 312, 317 (Miss. 1992).

Questions of law are presented in this appeal as a result of the EAB's finding, which sustained the Agency's decision to terminate Ms. Cox's employment. Therefore, *de novo* review is applicable. Assuming, for argument's sake, that this Court does not agree that questions of law are presented herein, review is limited to the record produced before the administrative body.

### **SUMMARY OF THE ARGUMENT**

The decision of the EAB is subject to *de novo* review under the "independent judgment test" because the actions of the EAB were done in violation of Ms. Cox's procedural due process rights as defined by Article Three, Section Fourteen of the Mississippi Constitution and the Fourteenth Amendment to the United States Constitution. Ms. Cox had valuable property rights in her employment that were wrongfully taken as a result of an erroneous decision rendered by the EAB without the benefit of a FULL and COMPLETE record of the incident which gave rise to Ms. Cox's termination. Moreover, the decision of the EAB, sustaining Ms. Cox's termination of employment under section 25-9-131 of the Mississippi Code Annotated, is fundamentally arbitrary and capricious as the decision fails the "substantial evidence test" and, therefore,

should not be entitled to deferential treatment by this Court. It is an undisputed fact that the record before this Court is incomplete, missing crucial and important segments of testimony that lend support and credence to Ms. Cox's assertion that she was not inattentive as alleged and that she was treated differently than other employees of MDOC who were captured on camera asleep while on duty.

For the above stated reasons, the decision of the Circuit Court of Sunflower County should be reversed.

### **ARGUMENT**

#### **I. WHETHER THE DECISION TO SUSTAIN MS. COX'S TERMINATION WITHOUT THE BENEFIT OF A COMPLETE TRANSCRIPT WAS DONE IN VIOLATION OF ARTICLE THREE, SECTION FOURTEEN OF THE CONSTITUTION OF THE STATE OF MISSISSIPPI AND THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, CREATING A CONSTITUTIONAL FACT WHEREAS THIS COURT MAY REVIEW THE EAB'S ACTIONS UNDER THE INDEPENDENT JUDGMENT TEST.**

Once it is shown that judicial review is available, the appellant must then show the extent of the reviewing court's inquiry into the merits of the challenged agency action. BERNARD SCHWARTZ, ET AL., ADMINISTRATIVE LAW, §10.1 (2nd ed. 1984); see also, URCCC 5.03. Put simplistically, the appellant must show how far the reviewing court may inquire into the agency's decision. Id. A review of an agency's decision triggers two pivotal questions: whether the review of the agency's decision in the judiciary is to *questions of law* or whether the review of the agency's decision in the judiciary is to *questions of fact*. McGowan at 317(citing Miss. State Dep't Health v. Southwest Miss. Reg. Med. Ctr., 580 So. 2d 1238, 1240 (Miss. 1991)); see also, General Ry. Signal v. Washington Transit Auth., 527 F. Supp. 359, 360 (D.C. 1979). Generally, judicial review over questions of fact is limited to the administrative record, with deference given to the administrative agency's decision. American Textile Manufacturers Institute v. Donovan, 452 U.S. 490 (1981). Deference is accorded to the

agency based on its expertise and knowledge in the challenged area. Id. Nevertheless, agency expertise is not enough to justify abdication of review power over facts. McGowan at 316. A court cannot simply rubber stamp the administrative agency's decision as proper under deference based upon administrative expertise. N.L.R.B. v. Tri-State Ins. Co., 188 F.2d 50, 53 (10th Cir. 1951). Where questions of law, such as constitutional rights, are raised on appeal from a decision of an administrative agency, an appellate court may review those issues outside of the record and under its own independent judgment without being impugned. McGowan at 324-25; see also, BERNARD SCHWARTZ, ET AL., ADMINISTRATIVE LAW, §10.1 (2nd ed. 1984).

In Ohio Valley Water Co. v. Borough of Ben Avon, 253 U.S. 287, 289 (1920), the United States Supreme Court held that "in all cases, if the owner claims a confiscation of his property will result, the State must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with the due process clause." (citations omitted). In McGowan, the Mississippi Supreme Court held that its review of the matters (whether McGowan was denied procedural due process rights) was with regard to "law and not fact," and de novo review was appropriate. McGowan at 317.

In the case at bar, the issues involved the record that was before the Full Board. Ms. Cox had valuable property rights in her employment, which required the adherence to the procedural due process requirements under the Mississippi Constitution and the United States Constitution. Ms Cox was entitled to have a full and complete record before the EAB. Clearly, the full EAB was in error to sustain the decision of the hearing officer when it did not have the FULL AND COMPLETE RECORD before it for review. At a minimum, 23 pages of shorthand notes of the testimony are missing. In reviewing the partial transcript of the hearing, Exhibits 13 and 14 were introduced during cross examination of Mr. Kelly, the Superintendent for MDOC. The testimony that was taken regarding the two exhibits is not included in the transcript. Mr. Kelly's testimony on

direct is central to how the agency has treated other employees that were accused or found to be asleep while on duty. The transcript simply states, "The following record is a portion of the last 23 pages of shorthand notes, which were damaged when Hurricane Katrina took off shingles of my office and I had leaks and ceiling tile which fell on some books, tapes, and papers."

The cross examination of Officer Hemphill, as well as the re-direct of Officer Hemphill, are missing from the transcript. Officer Hemphill's re-direct testimony is central in establishing how the agency decision to terminate Ms. Cox was arbitrary and capricious when other similar situated employees were treated differently. The transcript of the direct examination of Ms. Cox consists of a mere 10 words of testimony and the remaining testimony is missing from the transcript. Ms. Cox was called as an adverse witness and her testimony consisted of approximately 10 pages of transcript. In putting on her case, the records shows only ten (10) typed words from Ms. Cox. Clearly, Ms. Cox is entitled to a full and complete record of the proceeding before the EAB.

Where the unsuccessful party has been deprived, without his fault or negligence, of the official stenographer's transcript of the evidence or of an official transcript of the record in time to obtain a review of the case, a new trial may be granted. 66 C.J.S. *New Trial* § 127. Clearly, Ms. Cox is free from fault or negligence in the destruction of the missing portion of the transcript. In *Cockrham v. South Central Bell Tel. Co.*, 695 F.2d 143, 145 (5th Cir. 1983), the Fifth Circuit Court of Appeals held in an employment case that, "The loss of half of the trial transcript makes impossible the necessary, obligatory review of the magistrate's findings by the district court for clear error." (citations omitted). The case was reversed and remanded for retrial. The opportunity for a meaningful review by the full EAB and this Court is substantially affected, which raises a constitutional due process question. As this question now exists, this Court may adjudge this matter anew, inserting its own independent judgment.

**II. WHETHER THE EAB'S DECISION TO AFFIRM MS. COX'S TERMINATION FAILED TO MEET THE REQUIREMENTS OF THE "SUBSTANTIAL EVIDENCE TEST" SO AS TO VIOLATE FUNDAMENTAL PROCEDURAL PRINCIPLES OF ADMINISTRATIVE LAW AND INSTINCTIVELY MAKING THE EAB'S DECISION ARBITRARY AND CAPRICIOUS, THEREBY ENTITLING THIS COURT NOT TO GIVE DEFERENTIAL TREATMENT TO THE EAB'S PRIOR DECISION TO AFFIRM MS. COX'S TERMINATION.**

Again, once it is shown that judicial review is available, the appellant must then show the extent of the reviewing court's inquiry into the merits of the challenged agency action. BERNARD SCHWARTZ, ET AL., ADMINISTRATIVE LAW, §10.1 (2nd ed. 1984); see also, URCCC 5.03. Judicial review in the appellate courts of an administrative agency's decision is proper if the decision was not supported by substantial evidence on the record as a whole. Miss. State Bd. Of Pub. Accountancy v. Gray, 674 So. 2d 1251, 1252 (Miss. 1996). Under the "substantial evidence test," substantial evidence is something between the weight of evidence and a mere scintilla. Pub. Employees' Ret. Sys. v. Marquez, 774 So. 2d 421, 425 (Miss. 2000) (citations omitted) (emphasis added); see also, Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938). Substantial evidence is such evidence as "might lead a reasonable person to make a finding." Id. (citing Delta CMI v. Speck, 586 So. 2d 768, 768 (Miss. 1991) (emphasis added). And such evidence to support a fact-finding is substantial when from it "an inference of existence of the fact may be drawn reasonably." Id. (emphasis added); see also, Stork v. Restaurant, Inc. v. Boland, NY. 256, 274 (1940). The substantial evidence test is a test of the "reasonableness" of the agency findings. Cusson v. Firemen's Comm'n., 524 S.W.2d 88, 90 (Tex. Civ. App. 1975) (emphasis added). The reviewing court may not weigh the evidence, substituting its own judgment for that of the agency on the facts; but neither is it to rubber stamp fact-findings simply because they are supported by a scintilla of evidence. Consolidated Edison at 216-18. The reviewing court must reverse the agency decision if the court cannot conscientiously escape the conclusion that the finding is unfair. BERNARD SCHWARTZ, ET AL.,

ADMINISTRATIVE LAW, §10.1 (2nd ed. 1984); see also, Harrison County Bd. Of Supr's v. Carlo Corp. Inc., 833 So. 2d 582, 583 (Miss. 2003). "If an administrative agency's decision is not based on substantial evidence, it necessarily follows that the decision is arbitrary and capricious." Miss. State Dep't of Health v. Natchez Comm. Hosp., 743 So. 2d 973, 977 (Miss. 1999). An administrative agency's decision is *arbitrary* "when it is not done according to reason and judgment, but on the will alone"; fixed or done capriciously or at pleasure; absolute in power, tyrannical, despotic, non-rational, implying either a lack of understanding of or disregard for the fundamental nature of things. Burks v. Amite County Sch. Dist., 708 So. 2d 1366, 1370 (Miss. 1998) (emphasis added); see also, Carlo Corp. Inc. at 583. An action is *capricious* if "done without reason, in a whimsical manner, implying either a lack of understanding of or disregard for the surrounding facts and settled controlling principles"; freakish, fickle, or arbitrary. Id.; see also, Carlo Corp. Inc. at 583 (emphasis added).

In Miss. Dep't of Health v. Natchez Comm. Hosp., 743 So. 2d at 978-79, the Mississippi Supreme Court upheld the reversal of the State Health Officer by the Hinds County Chancery Court. In that case, Q.S.C. filed an application for certificate of need under the Mississippi State Health Plan. Id. at 975. Q.S.C.'s application was reviewed by the Staff of the Health Planning and Resource Development Division of the Department of Health. Id. After a hearing, the Hearing Officer found substantial evidence to grant a C.O.N. license to Q.S.C. Id. Natchez Hospital appealed the decision to the Chancery Court of Hinds County, Mississippi. Id. On review, the Chancellor ruled that the Health Officer's decision had failed the substantial evidence test. Id. at 977. There was insufficient evidence in the whole record as to why the Health Officer should have granted the CON to Q.S.C. Id. On appeal, the Mississippi Supreme Court agreed, finding the Health Officer's decision arbitrary, capricious, based on whimsy, and unsupported by substantial evidence in the whole record. Id. at 978-79.

Cutting through the smoke and mirrors of the testimony introduced at the hearing before the EAB, the evidence boils down to this: Ms. Cox is alleged by Rogers to be inattentive for approximately five seconds R:4, L19. Rogers was newly appointed to his position as Deputy Warden, and he had very little experience supervising officers in a maximum security unit. R:9, L19-22. Rogers received his promotion on January 3, 2005. R:90, L1-7. In Rogers's first report of the incident he stated, "I don't think my original memo ever mentioned that she was asleep." R:23, L10-11. In fact when Rogers was questioned whether Ms. Cox was asleep, he agreed that he was not saying that she was sleep but unresponsive for five seconds. R:23, L14-18. The more telling evidence is Rogers' testimony that he has never said that Ms. Cox appeared to be asleep. R:40, L5. MDOC failed to conduct any form of investigation into the matter. Rogers testified that the matter was pending investigation. R:17, L25. However, there were no investigations that were actually conducted by Rogers. R:18, L1-13.

MDOC called the hearing officer, Ms. Connie Ayers, to testify regarding her findings and recommendations. Ms. Ayers testified that she recommended that Ms. Cox be terminated based on the fact that Ms. Cox was unaware of her surroundings and apparently appeared to be asleep. R56, L23-24. Ms. Ayers also testified that all officers that appear to be asleep and unaware of their surrounding should be treated no different that Ms. Cox. R:58, L11-14. When questioned regarding Officers Rias and Price, Ms. Ayers testified that she was not aware of the incidents and that they have never been brought to her for a hearing. R:62, L12-24. When Ms. Ayers was questioned regarding whether her recommendation to terminate Ms. Cox treated Ms. Cox the same as other employees, Ms. Ayers stated, "evidently -- evidently not..." R:63-21-24. MDOC can offer no reasonable explanation as to why Ms. Cox, a 17 year veteran employee with no prior disciplinary actions, was treated different than other employees. Clearly, the disciplinary actions against Ms. Cox was arbitrary and capricious.



Officer Hemphill, who was present at the unit on the day of the incident, testified that on her way back into the building from speaking with Ms. Cox and smoking a cigarette, she met Rogers going outside to where Ms. Cox was located. R:99, L1- 1-25. Officer Hemphill has been employed with MDOC for over 19 years and has worked with Ms. Cox for over 9 years. R:96, L15-19 and R:97, L9. In the 19 years that Officer Hemphill has worked at MDOC, Ms. Cox is the only employee that she is aware of that has been terminated for being inattentive for approximately 5 seconds. Officer Hemphill testified that she was familiar with an incident where Officer Ware was sleeping and had her gun taken while she slept but was not terminated. R:102, L2-8. **The remainder of Officer Hemphill testimony on cross and re-direct is missing from the transcript. R:102, L17.**

**All of Ms. Cox's direct testimony is missing from the transcript. The official transcript contains only 10 words of testimony from Ms. Cox.**

Without re-weighing the evidence and with no means of discussing the evidence, no reasonable inferences can be made that Ms. Cox has not been treated arbitrary and capricious. The EAB improvidently believed that Ms. Cox violated the rules and was asleep on duty without reviewing the record. It was impossible for the EAB and will be impossible for this Court to review the complete record because there is no complete record to review. This along make the decision of affirming Ms. Cox's termination arbitrary and capricious and a violation of Ms. Cox's constitutional right to due process.

The substantial evidence test has long required that administrative bodies use more than "isolated evidence" to support a ruling. BERNARD SCHWARTZ, ET AL., ADMINISTRATIVE LAW, §10.7 (2nd ed. 1984). There should be no one-sided scrutiny by the agency. Marzaco v. Lowe, 58 F. Supp. 900, 902 (D.N.J. 1945). Instead, the agencies look at all of the evidence presented (the whole record) when rendering a decision. Id.

It is certain that the EAB could not have reviewed the whole record because the whole record does not exist.

Combing ever so carefully through the entire record, it can be deduced that the substantial evidence test has not been met. Ms. Cox was not sleep and Rogers admitted that he was not saying that she was sleep. Further, MDOC has treated other similarly situated employees different from Ms. Cox. The EAB's decision is unsupported by substantial evidence and is strictly whimsy and without reason. Deference to the EAB cannot follow, and the EAB's decision should be reversed.

### CONCLUSION

For the reasons set forth above, Appellant respectfully requests that this Honorable Court reverse the decision of the Circuit Court of Sunflower County, which sustained the decision of MDOC to terminate Ms. Cox's employment and affirmed the decision of the EAB. Appellant also respectfully requests that this Honorable Court reinstate her to her former position with all rights, benefits, seniority as if she had never been terminated or, in the alternative, grant her a new hearing pursuant to her motion for a new trial.

RESPECTFULLY SUBMITTED, this the 10<sup>th</sup> day of April, 2007.

Appellant  
Emma Cox

By: 

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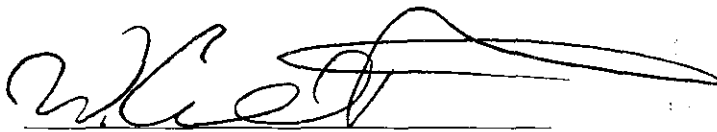
**CERTIFICATE OF SERVICE**

I, W. Ellis Pittman, of Pittman Law Office, P.L.L.C., do hereby certify that I have caused to be delivered this day by United States mail, postage pre-paid, a true and correct copy of Appellant's Brief to the following(s):

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Jackson, MS 39205-0249

THIS, the 6<sup>th</sup> day of April, 2007.

  
W. Ellis Pittman



STATE OF MISSISSIPPI  
DEPARTMENT OF CORRECTIONS  
CHRISTOPHER B. EPPS  
COMMISSIONER

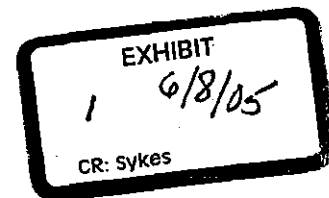
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TO: CORRECTIONAL COMMANDER  
ANTHONY PORTER/ UNIT 32 BRAVO

FROM: John D. Rogers  
Corr-Deputy Warden Area III



RE: CO IV EMMA COX

On 01/11/05, at approximately 1157 hours, I, Deputy Warden John Rogers entered Unit 32 Bravo. During my tour of the building, I observed "yard call" in progress. I exited the building to monitor the detail at approximately 1220 hours. At this approximate time, I observed Co IV Emma Cox sitting down adjacent to the door. Officer Cox had both eyes closed and did not realize that I had walked out onto the yard. After approximately five seconds, I addressed the Officer and asked what her name was. I then asked the Officer had she not received a directive about sitting down while on yard call. Officer Cox then stated that her leg was swelling and that she sat down to gain relief. I questioned Officer Cox as to why her eyes were shut and why she did not realize that I had walked out onto the yard. Officer Cox stated that she was looking in the other direction from me. I instructed Officer Cox to be more responsible on her post. Due to the seriousness of this incident, I recommend action be taken.

PC: Warden Earnest Lee  
File

## INCIDENT REPORT

Page 1 of 1 Pages

FILE TITLE: Security Operations

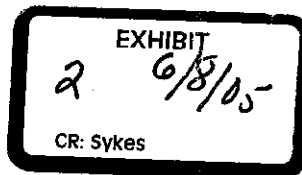
CASE STATUS:

BY: Ofcr. Emma Cox

AT Unit 32 Bravo

DATE 01-08-05

WITNESS(ES)



RELATED FILES:

( ) EOC  
( ) Supt  
( ) Personnel  
( ) IAD  
( ) File

REPORT RE: Ofcr. Emma Cox slipping on tier 3.

On January 08, 2005, at approximately 0814 hours, Ofcr. Emma Cox was on tier 3 at Unit 32 Bravo Building, A zone conducting the certified body count. Ofcr. Cox had counted on the left side of the tier and began the count on the right side of tier, there was food on the floor at the opening walk way. Ofcr. Cox did not see the spilled floor due to her observing the cell. Ofcr. Cox began slipping and losing her balance. Ofcr. Cox did regain balance but hurt her left hand and back. -End of Report

Disposition: Officer Cox did go to U/H for medical treatment @ 1-40

SIGNATURE OF OFFICER

Emma Cox

APPROVED NAME TITLE

Commander Anthony Parks

DATE

1/8/05

EXHIBIT

3 6/8/05

CR: Sykes

## Supervisor's Accident Report

To be completed immediately after accident, even when there is no injury

## Mississippi Department of Corrections

Name Emma Cox		Date of birth 07-31-52	SS # 587 62 6827	Date Hired 08-12-8
Address P.O. Box 593		Sex F	Marital status M	Job title CO-IV
Moorhead, MS 38761		# of dependents 4	Employment status Perm.	
Phone 662-246-8095		Salary/monthly	# days work/week 05	
Time employee began work 0745	Shift 2nd	Date injury/illness 1-8-05	Time occurrence 0844	Last work day 1-8-05
Date supervisor notified 1-8-05	Date forwarded to personnel	Employee work location 32 Bravo		
Type injury/illness Slipping/Fall	Part of body affected back/hand	Did injury/illness occur on employer's premises Ye		
Department/location/county where accident/illness occurred Security, MSP Unit 32, Sunflower				Was weather a factor No
Specify equipment, materials or chemicals employee was using when accident/illness occurred N/A				
Specify activity employee was engaged in when accident/illness exposure occurred Counting on tier 3 at Unit 32 Bravo Building				
Work process employee was engaged in when accident/illness occurred Dfer. Emma Cox was conducting the building certified body count				
Detailed narrative description of how the accident/injury occurred Employee was on tier 3 counting and went on the right side of tier to complete the count. There was food wasted on the floor. Employee did not see the food because she was observing the inmates and cells and began slipping losing balance				
Safeguards, personal protective or safety equipment provided? NO			Were they used NO	
If no, why were they not used? N/A				
Witnesses (Full Names) Dfer. Minnie Pettygrew				
(Attach a copy of witnesses' Incident Report to this report)		Was medical treatment provided?		(On site?) Off site?
What can be done to prevent recurrence of the accident/injury? Be more observant of surroundings				
Date 1/8/05	Signature of Supervisor Lt. Shirley Harris		1/11/05	
Supervisor's Name (Print) Shirley Jean Harris		Supervisor's work phone 745-6611		

5035105

Date 4/24/2005  
Time 10:07  
Unit Unit 32  
Building Bravo  
Zone A  
Tier 1  
Activity Observed

Report ID 5911  
Reported to OIC  
Nature of Observation Security Threat  
Name Wilson, Kenny  
MDOC Number 83075  
Incident Type Offender hanging sheet

ESOC Analyst observed Offender Wilson, housed in cell #15, with a sheet covering his entire cell door. At approximately 1008 hours, Officer Undrell Golden entered the tier and advised Offender Wilson to remove the sheet and he complied. At this time, Officer Golden departed the tier and Offender Wilson placed the sheet back covering his entire cell door. At approximately 1010 hours, OIC Porter entered the tier and retrieved the sheet.

Date 4/24/2005  
Time 10:25  
Unit Unit 32  
Building Delta  
Zone B  
Tier Bottom  
Activity Observed

Report ID 5912  
Reported to OIC  
Nature of Observation Security Threat  
Name Rias, Kammi  
MDOC Number  
Incident Type Staff appearing to be asleep

ESOC Analyst observed Officer Rias laying back in her chair with her feet propped up appearing to be asleep and Officer Price hiding behind the staircase. At approximately 1040 hours, OIC Wash entered the tower and spoke with both officers advising them to stay alert. At this time, both officers became alert and began to conduct their normal duties. A copy of this incident was recorded to disc and provided to Supt. Kelly on 04/26/05.

*Officer Rias  
Capt. Wilson*

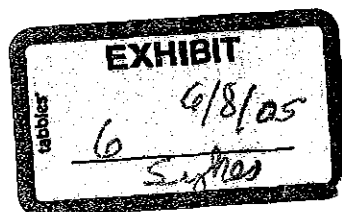
BOTH OFFICERS RIAS AND PRICE WILL BE ISSUED WRITTEN REPRIMANDS.  
ON THEIR RETURN TO WORK.

Date 4/24/2005  
Time 10:25  
Unit Unit 32  
Building Delta  
Zone B  
Tier Bottom  
Activity Observed

Report ID 5913  
Reported to OIC  
Nature of Observation Security Threat  
Name Price, Edna  
MDOC Number  
Incident Type Staff appearing to be asleep

ESOC Analyst observed Officer Rias laying back in her chair with her feet propped up appearing to be asleep and Officer Price hiding behind the staircase. At approximately 1040 hours, OIC Wash entered the tower and spoke with both officers advising them to stay alert. At this time, both officers became alert and began to conduct their normal duties.

*✓*



*Approved*  
*03/21/05*



STATE OF MISSISSIPPI  
DEPARTMENT OF CORRECTIONS  
CHRISTOPHER R. EPPS  
COMMISSIONER

Lawrence Kelly, Superintendent  
Mississippi State Penitentiary

Post Office Box 1057  
Parchman, Mississippi 38738  
(601)745-6611

DATE: 03/21/05

TO: All Area III Commanders / Supervisors

FROM: John D. Rogers *(PP)*  
Deputy Warden Area III

Re: Disciplinary action for staff that appear to be asleep on post as reported by ESOC

Per Warden Lee, anytime a staff member is observed "appearing to be asleep" on duty the following action shall be applied;

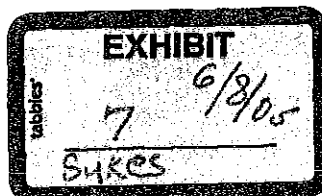
Staff members not on probation: 1<sup>st</sup> offense.....Written Reprimand

2<sup>nd</sup> offense.....Request for Ad. Review Hearing

Staff members on probation: 1<sup>st</sup> offense.....Written Reprimand

2<sup>nd</sup> offense.....Request for Dismissal

PC: Warden Lee  
Captains  
Lieutenants  
Watch Cmdrs.  
File








STATE OF MISSISSIPPI  
DEPARTMENT OF CORRECTIONS  
CHRISTOPHER B. EPPS  
COMMISSIONER

Lawrence Kelly, Superintendent  
Mississippi State Penitentiary

Post Office Box 1057  
Parchman, Mississippi 38738  
(601)745-6611

DATE: 05/25/05

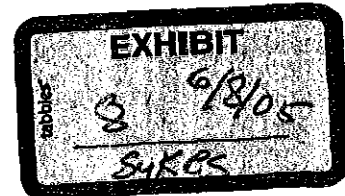
TO: All Area III Commanders / Supervisors

From: John D. Rogers   
Deputy Warden Area III

Re: Disciplinary Action for staff that "appear to be asleep or inattentive" while on duty.

Effective immediately, any staff that "appears to be asleep or inattentive" while on duty will be subject to disciplinary action that might include; request for administrative review hearing. Supervisors will ensure that appropriate action will be taken. This memo supercedes any previous memo concerning the same.

PC: Warden Lee  
Commanders  
Shift Supervisors  
Area III Watch Cmdrs.



Read In Muster 3 consecutive  
days.

*Notice!!*