

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2011-CC-00288

**GLENN TODD WILSON
APPELLANT**

v.

**MISSISSIPPI DEPARTMENT OF CORRECTIONS
APPELLEE**

**On Appeal From the Circuit Court
of Forrest County, Mississippi**

BRIEF OF THE APPELLEES

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CERTIFICATE 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 this Court may evaluate possible disqualifications or recusal:

1. Glenn Todd Wilson, Appellant
Mississippi Department of Corrections, Appellee
Christopher Epps, Commissioner MDOC, Appellee
Charles Bunnell Agency Representative MDOC, Appellee
Hon. Robert Helfrich, Circuit Court Judge
Fulton O. Mason, EAB Hearing Officer
Jim Hood, Attorney General

The undersigned counsel further certifies that the following attorneys have an interest in the outcome of this case:

For Appellee:

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2. David K. Scott, Special Assistant Attorney General

For Appellant:

1. Lee Turner, Esq.


By: 

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STATEMENT OF ISSUES

1. Whether the EAB's Decision to Uphold the Termination of Glenn Todd Wilson Was Supported By Substantial Evidence that he Forged Offender Signatures on Official Paperwork.

2. Whether the EAB's Decision to Uphold the Termination of Glenn Todd Wilson Was Arbitrary and Capricious.

STATEMENT OF THE CASE¹

Former Mississippi Department of Corrections ("MDOC") employee Glenn Todd Wilson ("Wilson") has filed this appeal from the Circuit Court of Forrest County concerning his termination from employment with MDOC. Prior to his termination which is the basis of this appeal, Wilson was employed with MDOC as a Field Officer III at the Forrest County Probation and Parole Office. R.Vol.2 at 2.

On January 20, 2009, an agency administrative hearing was held where Wilson was charged with violation of Group III, Number 4 and Group III, Number 11. The specifics of the charges were as follows:

On November 11, 2008, at approximately 1500 hours while Correctional Field Officer III Glenn T. Wilson was at court, Field Officer Supervisor Michael Upshaw took an office report on Offender Thomas Bouchee, #109959. After Offender Bouchee signed the Report Verification Form, FOS Upshaw noticed that his signature was notably different than the preceding seven (7) signatures on file. When FOS Upshaw questioned Bouchee regarding his signature, Bouchee stated that it had been a long time since he had signed his file. Upon further inspection of Bouchee's file by FOS Upshaw, the Firearms and Voting Laws Form also had a signature that did not resemble the one just obtained. FOS Michael Upshaw also pulled several other offenders' files to include: Inmates Adam Adtkinson, #127099; Shenet Brewer, #100785; Joseph Bolton, #121408 and Ronald Berry, #L3044. Upon pulling several forms from each file, it was noted that the signatures on the forms were not similar to other signatures in the file. While FOS Upshaw was in CFO Wilson's office looking at files, CFO Wilson returned from court and state that if FOS Upshaw would tell him what he was looking for, he would tell him where to find it. At this point, FOS Upshaw told CFO Wilson that he had taken Offender Bouchee's report and noticed differences in signatures in his file. CFO Wilson stated, "Well, I didn't sign it for him."

CCAD Charles Bunnell was contacted and he arrived at the Hattiesburg Probation and Parole Office and confronted CFO Wilson about signing offenders' names to

¹For purposes of consistency between briefs, we will cite as the Appellant has, citations to the transcript will be noted as "TR at *page no.*" and all other citations will be cited as "R Vol. *no.* at *page no.*". Also, exhibits from the April 7, 2009 Hearing will be noted as "Exh. *no.*".

documents in the files. CFO Wilson admitted to signing offenders' names on documents, however, he adamantly denied signing documents in Offender Bouchee's file. Upon further questioning, he admitted that he signed for one person because he had a cast on his hand; another because she was holding a child; and one because he was old. When asked how many other files we would find like these, he stated there are a few more.

R.Vol.2 at 6.

As a result of the administrative hearing, the hearing officer recommended that Wilson be terminated. R.Vol.2 at 6. Wilson appealed his termination to the EAB. R.Vol.2 at 1. The case was heard on April 7, 2009, by Hearing Officer Falton O. Mason, Jr. at the courthouse at the Mississippi State Penitentiary (MSP). R.Vol.2 at 24. On April 21, 2009, Judge Mason entered an order affirming the action taken by MDOC and dismissing the appeal of Wilson. R.Vol.2 at 24.

Feeling aggrieved, Wilson appealed the Hearing Officer's decision to the Full Board. R.Vol.2 at 26. On August 19, 2009, the Full Board entered an Order affirming the decision of the Hearing Officer. R.Vol.1 at 7. Wilson then appealed the Board's decision to the Circuit Court of Forrest County, Mississippi. R.Vol.1 at 5. The Circuit Court affirmed the EAB decision. R.Vol.1 at 40. Wilson now appeals from the Circuit Court.

STATEMENT OF THE FACTS

In the Termination of Employment memo dated January 22, 2009, Wilson was specifically accused of signing multiple offenders' signatures to official documents in their files. Exh 3. During his hearing before Judge Mason, Wilson was given an opportunity to dispute the assertions in his termination memo and confirmed that he signed certain offenders' names to official documents they were supposed to sign, while attempting to explain why he signed their

names. Tr. at 33-34. Later in his testimony he again confirmed that he had signed for at least four offenders, and possibly one or two more. Tr. at 39-40.

Officer Michael Upshaw testified that Offender Donald Bouchee was an offender normally supervised by Wilson, and that he had occasion to see Offender Bouchee sign his name on a report. Tr at 5-6. Upshaw testified that Bouchee's actual signature did not match other signatures on the report that were supposed to be Bouchee's. Tr at 6. Upshaw asked Bouchee if the other signatures were his and was told that they were not. Tr at 6.

Upshaw testified that he looked at several files of offenders Wilson supervised. Tr at 8. He found four more files with signature inconsistencies among Wilson's files for offenders with last names beginning with A or B. Tr at 8. Upshaw testified that these files were shown to Wilson and he admitted to signing forms for all offenders except Bouchee. Tr at 9. Charles Bunnell also testified that Wilson admitted signing for some offenders. Tr at 45.

SUMMARY OF THE ARGUMENT

There was overwhelming evidence, including an admission by Wilson himself, to support the hearing officer's finding that Wilson had been forging offender signatures on official paperwork. Therefore the EAB's decision to affirm MDOC's termination of Wilson was based on substantial evidence and was not arbitrary and capricious.

ARGUMENT

The general rule for judicial review of an administrative agency's findings and decision is, "[a]n agency's conclusions must remain undisturbed unless the agency's order 1) is not supported by substantial evidence, 2) is arbitrary or capricious, 3) is beyond the scope or power granted to the agency, or 4) violates one's constitutional rights" *Allen v. Mississippi*

Employment Security Commission, 639 So.2d 904, 906 (Miss. 1994). “Moreover, there is a rebuttable presumption in favor of the action of an administrative agency and the burden of proof is upon one challenging its actions.” *Ricks v. Mississippi State Dept. of Health*, 719 So.2d 173, 177 (Miss. 1998).

Wilson argues that *Mississippi Department of Corrections v. Pennington*, 59 So. 3d 636 (Miss. App. 2011) holds that the EAB may modify a decision when the employee was punished too severely. This case actually held that the employee’s reinstatement was due to the fact that the hearing officer found that the acts leading to the termination did not occur. *Id* at 639. This case also held that

**I. The EAB’s Decision to Uphold the Termination of Glenn Todd Wilson
Was Supported By Substantial Evidence that he Forged
Offender Signatures on Official Paperwork**

The Hearing Officer, as the trier of fact, is in the best position to determine the credibility of witnesses and to determine who and what to believe when there are conflicts in testimony since he is able to listen to each witness and observe their demeanor. The Hearing Officer’s findings of fact should not be disturbed unless manifestly wrong. *See, Pride Oil Co., Inc. v. Tommy Brooks Oil Co.*, 761 So.2d 187 (Miss. 2000); *St. Dominic-Jackson Memorial Hosp. v. Miss. State Dept. of Health*, 728 So.2d 81, 97 (Miss. 1998).

Wilson was charged with committing a Group III, Number 11 Offense:

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.

and a Group III, Number 4 Offense:

Falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official state documents.

The Hearing Officer made the following findings in his opinion:

Field Officer Supervisor Michael Upshaw, Probation Parole Hattiesburg Office, Mississippi Department of Corrections, testified that on November 11, 2008, while Officer Glenn Toddy Wilson was in Court, he took an office report on Offender Thomas Bouchee # 109959; when the offender signed the report, he noticed that his signature was different from the previous seven (7) signatures on file. He asked the offender about his signatures; he responded that it had been a long time since he signed his file. Mr. Upshaw inspected Offender Bouchee's file and found that the Firearms and Voting Law form had a signature that did not resemble the signature just signed by Offender Bouchee. When Mr. Upshaw asked the Appealing Party about the signature, he replied "Well I didn't sign it for him." Mr. Upshaw also testified that the Appealing Party admitted that he had signed for some offenders, one because he had a cast on his hand, another because she was holding a child, and one because he was old. But denies that he signed the [sic] Bouchee's file.

Mr. Upshaw further testified that in his investigation, he found a number of other offenders's [sic] files in which the signature were not the same.

Mr. Charles Bunnell Assistant Director testified that he had never heard of other field officers who signed offenders's [sic] files.

The Appealing Party has the burden of proving that the action taken against him by the Responding Party is arbitrary or capricious, against the overwhelming weight of the evidence and he merits the relief he seeks. In this instance, the Appealing Party admitted that he had signed a numbers [sic] of offenders' files; however, he denied that he signed Offender Bouchee's file. He admitted that he had messed up and that he would never do it again.

Under SPB rules, if there is evidence to support the agency's findings and "if the personnel action taken by the responding agency is allowed under said policies, rules and regulations, the Employee Appeals Board shall not alter the action." **SPB Rule XXIV(B)**. See, **Johnson v. Miss. Dept. of Corrections**, 682 So.2d 367, 369-71 (Miss. 1996) and **Pennington at 638**.

The *Mississippi State Employee Handbook*, §10.0 p.65, Rev. October 2003, states that the “[c]ommission of one (1) Group Three offense may be disciplined by a written reprimand and/or may result in suspension without pay for up to thirty working days, demotion, or dismissal.” It is undisputed that Wilson falsified documents by signing an offender’s name to it. Wilson admitted to this at the hearing. This amounts to a Group III, Number 11 violation of negligent conduct and a Group III, Number 4 violation of falsification of records.

Wilson claims that no damage resulted from his actions and asserts that there was confusion about paper records and electronic records. These arguments are simply attempts to distract from the fact that he forged offenders’ signatures on official documents. These include documents that could potentially have been used in court to have an offender extradited to or from another jurisdiction.

From the testimony, including Wilson’s own admissions, the hearing officer found that there was substantial evidence to support the allegation that Wilson forged others’ names on official documents.

II. The EAB’s Decision to Uphold the Termination of Glenn Todd Wilson Was Not Arbitrary and Capricious

The Mississippi Supreme court has defined the terms “arbitrary” and “capricious” as follows:

An administrative agency's decision is arbitrary when it is *not done according to reason and judgment*, but *depending on the will alone*. 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*.

Limbert v. Miss. University for Women Alumnae Ass’n, Inc., 998 So.2d 993, 1000 (Miss. 2008)(emphasis in original)(citations omitted).

At the hearing Wilson attempted to establish his claim that not every one of MDOC's policies and regulations was strictly followed to the letter. However he did not put on proof of what policies may not have been strictly followed. He did not attempt to show that these alleged discrepancies were the equivalent of forging offenders' signatures on official documents. Also, in spite of his innuendo, he does not ever affirmatively claim (and certainly did not put on proof) that any other officers were forging offenders' signatures to official documents.

Wilson also claims that the decision below is arbitrary and capricious because the punishment was too harsh. In essence he is claiming that termination is too harsh of a punishment for an officer of the law who forges the signatures of offenders under his supervision onto official documents, some of which could have been used to return an offender to incarceration. He wants this Court to substitute its judgement for the hearing officer who actually heard the evidence and the EAB under whose statutes and rules the termination was adjudicated.

As justification for this claim he cites three previous opinions involving MDOC disciplinary actions that went through the EAB process. *Walley v. Mississippi Department of Corrections*, 766 So. 2d 60 (Miss. Ct. App. 2000), *Mississippi Department of Corrections v. McClee*, 677 So. 2d 732 (Miss. 1996), and *Pennington, supra*.

McClee was reversed and remanded because the hearing officer had found that it hadn't been proven whether McClee was actually asleep, but the burden of proof had improperly been placed on MDOC. *McClee at 735*. Pennington, as has been previously mentioned, involved a finding by the hearing officer that Pennington proved at his hearing that the factual allegations on which MDOC based its decision did not occur. *Pennington at 636 and 639*.

In Walley the EAB (not an appellate court), under its rules in place at that time, altered the punishment originally handed out by MDOC, and the EAB action was upheld by the appellate court. *Walley at 63-64*. Walley involved a jest gone bad situation in which Walley claims he meant his actions jokingly. *Id.* In the case at hand Wilson clearly intended to forge onto official documents the signatures of offenders over whom he had supervisory duties. Walley actually attempted to get the appellate court to substitute its judgement regarding the severity of the punishment for that of the EAB and the court refused. *Id at 64*.

In none of these cases would the appellate court substitute its judgement for that of the EAB in determining whether the punishment was too harsh.

This brings us back to the EAB rules in effect at the time of this disciplinary action. If there is evidence to support the agency's findings and "if the personnel action taken by the responding agency is allowed under said policies, rules and regulations, the Employee Appeals Board shall not alter the action." *SPB Rule XXIV(B)*. See, *Johnson at 369-371*. *Pennington at 638* The Mississippi Court of Appeals in *Mississippi Department of Corrections v. Harris*, 831 So.2d 1190(Miss.Ct.App. 2002) explained this rule as follows:

If there was evidence to support the findings that at least one Group III offense occurred, an offense which permits an agency to terminate its employee, then the termination must be upheld since the Department "acted in accordance with the published policies, rules and regulations of the State Personnel Board, and ... the personnel action taken by the responding agency is allowed under said policies, rules and regulations...."

Id. at 1193.

The decision to terminate was made according to reason and judgement based upon substantial evidence. It was not arbitrary and capricious. The EAB properly upheld its hearing officer's decision based on the factual evidence from the hearing..

CONCLUSION

The decision of the hearing officer that Glenn Todd Wilson forged signatures was supported by substantial evidence. The decision to terminate was not arbitrary and capricious.

Respectfully submitted,

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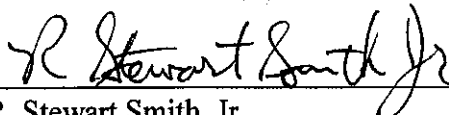
CERTIFICATE OF SERVICE

I, R. Stewart Smith, Jr., Special Assistant Attorney General for the State of Mississippi,
do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the
above and foregoing **BRIEF OF THE APPELLEE** to the following:

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Hon. Robert Helfrich
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This the 14th day of October, 2011.



R. Stewart Smith, Jr.
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