

Factual/Procedural Background

John Doe began working at the Mississippi Department of Departments on January 1, 2008.¹ His title when he began was Analyst I. His core job duties involved fixing problems in the system.² From the time he began working at the Department until December 2022, Mr. Doe was supervised by the same person, Ms. Jane Roe.³ His annual performance reviews for every year before 2023 showed that Mr. Doe was performing exceptionally as an analyst.⁴

On December 1, 2022, the Department hired Cruella DeVille as the Team Lead over the analysts at the Department.⁵ Unbeknownst to the Department, Ms. DeVille had a long and tormented personal history with John Doe.⁶ In fact, Ms. DeVille's ex-husband was the best man in Mr. Doe's storied marriage.⁷ Despite the fact that she is a chronic alcoholic and serial philanderer, Ms. DeVille has long blamed Mr. Doe for the failure of her marriage.⁸

Almost immediately after she began working at the Department, Ms. DeVille began taking her personal grievances against Mr. Doe out on his professional reputation.⁹ She

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told coworkers not to work with him.¹⁰ She even took away the very tools he needed to perform his job adequately.¹¹

On December 31, 2022, the Department sent Mr. Doe a notice of suspension with pay.¹² The notice failed to provide any reason as to why Mr. Doe was being suspended.¹³ Two weeks later, the Department gave Mr. Doe 3 days' notice of a hearing on his conduct.¹⁴ The notice failed to adequately state what the agency believed Mr. Doe did wrong.¹⁵ At the hearing, the agency failed to let Mr. Doe offer any documents in his defense.¹⁶

Legal Standard

Mississippi law requires an agency to provide notice and a meaningful opportunity to be heard before an agency can terminate a state service employee.

No employee of any department, agency or institution who is included under this chapter or hereafter included under its authority, and who is subject to the rules and regulations prescribed by the state personnel system, may be dismissed or otherwise adversely affected as to compensation or employment status except for inefficiency or other good cause, and after written notice and hearing within the department, agency or institution as shall be specified in the rules and regulations of the State Personnel Board complying with due process of law...

Miss. Code Ann. § 25-9-127(1). The employee challenging the adverse employment action has the burden of demonstrating that the agency acted arbitrarily and capriciously. *Jones v. Department of Fun*, 1000 So. 4th 1000, 1002 (Miss. 2022). To do so, he must show

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either that the allegations provided in a due process notice were not true, or the action was not proportional to the conduct alleged. *Id.* Here, the agency failed to give proper notice, and it failed to demonstrate Mr. Doe was responsible for inefficiency or other good cause.

Analysis

1. The agency's decision should be reversed because the notice failed to provide him with due process.

Under Mississippi law, every employee in the state service is entitled to due process before an agency can take an adverse employment action. Miss. Code Ann. § 25-9-127. At a minimum, that requires notice of the charges against him and an adequate opportunity to be heard. The agency provided neither in this case.

a. The notice did not afford Mr. Doe enough time to respond.

The State Employee Handbook requires an agency to give an employee written notice of the alleged inefficiency or other good cause at least five working days before a hearing. State Employee Handbook § 7.3. The notice of hearing from the agency is dated and signed on January 13, 2023, but the hearing was scheduled for January 16, 2023. Not only was that not the required five working days; it was only five days. The case of *Jones v. Department of Fun* is instructive here.

In *Jones*, the Mississippi Supreme Court reversed an agency's decision to terminate an employee when the agency only provided four days' notice. *Jones v. Department of Fun*, 2000 So. 4th 1000, 1002 (Miss. 2022). And in *Davis v. Department of Work*, the Court of Appeals reinstated an employee with just three *working days'* notice. *Davis v.*

Department of Work, 2001 So. 4th 2000, 2002 (Miss. Ct. App. 2023). Because Mr. Doe only received *three calendar days*' notice, his termination must be reversed.

b. The notice failed to properly articulate what he did wrong.

In addition to being untimely, the notice failed to articulate what it was that Mr. Doe did wrong, thereby depriving him of a meaningful opportunity to be heard. The State Employee Handbook requires the following of a lawful notice:

Written notice means the employee is provided with a statement summarizing the reasons(s) the employee is facing possible disciplinary action. The notice should state with sufficient specificity the inefficiency and/or other good cause reason(s), so the employee may adequately respond. The notice must state an appointed time and location for the employee to respond to the allegation(s) in a hearing. The reason(s) listed in the notice will be the only reason(s) addressed throughout the appeals process.

State Employee Handbook § 7.3. Here the notice the Mr. Doe received stated in its entirety: “John Doe is not performing the work at a level we expect of him.”

The notice failed to summarize any specific instances of misconduct. It fails to show how anything he did constituted “inefficiency or other good cause.” And even if it had been timely transmitted, the vagueness and ambiguity failed to allow him an adequate opportunity to defend himself.

Davis is directly on point here. In *Davis*, the agency's decision was reversed because the notice was unspecific. 2000 So. 4th at 2020. Likewise, *Jones* holds that at a bare minimum the employee is entitled to know exactly what conduct constituted inefficiency or other good cause. *Jones*, 1000 So. 4th at 1021. For those reasons, the agency failed to give Mr. Doe due process of law.

2. The agency's decision should be reversed because it acted arbitrarily and capriciously.

The EAB has the authority to reverse an agency decision when it acts arbitrarily and capriciously. The Department of Departments's decision was both.

a. The agency never provided him with the tools to do his job.

Neither a state agency nor any employer can expect an employee to perform the essential functions of his job without providing him with the proper tools. Mr. Doe never received a computer, but was expected to type electronic memos on everything he was doing. Despite not being provided with a computer, Mr. Doe used his own equipment to meet his requirement. But the agency said that all documents must be submitted on a work computer for security purposes. That is the definition of arbitrary and capricious.

In *Jones*, the Court held that such action constituted inefficiency or other good cause. *Jones v. Department of Fun*, 1000 So. 4th 1000, 1025 (Miss. 2023). It cited decades of caselaw that supports that argument. *Id.*

b. The agency ignored the obvious conflict of interest with Cruella Deville.

Mr. Doe's performance reviews for more than a decade showed that he was an exemplary employee. He was promoted through the chain seven times before Cruella DeVille became his supervisor. However, unbeknownst to the agency, Cruella DeVille hated Mr. Doe because of his friendship with her ex-husband. The record at the hearing demonstrates nothing but severe personal animus that is not based upon anything related to Mr. Doe's performance.¹⁷

¹⁷ Cite to a portion of the record supporting this statement.

The Mississippi Supreme Court has held that an employees past performance reviews are relevant to an agency's decision to terminate that employee. *Jones*, 1000 So. 4th at 1051. Here, the evidence demonstrates that Mr. Doe has long been a valuable employee, that he was promoted, and fails to demonstrate a diminution of that performance. Instead, the records is replete with evidence that Ms. DeVille was trying anyway possible to fire Mr. Doe. That is arbitrary and capricious.

Conclusion

For the foregoing reasons, the EAB should reverse the agency's decision to terminate Mr. Doe and order that it reinstate Mr. Doe with backpay. And Mr. Doe requests all relief to which he would be entitled, at law or in equity.

Dated: December 1, 2023.

Respectfully submitted,

JOHN DOE

s/John Doe _____

John Doe

CERTIFICATE OF SERVICE

I, John Doe, Appellant, do hereby certify this day that I filed the foregoing *Motion to Strike* with the EAB and that I have served a copy by electronic mail to:

Jane Roe
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210 E. Capitol Street
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Dated: December 1, 2023.

s/John Doe

John Doe

Example Only - Not Legal Advice