FILED
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EMPLOYEE APPEALS BOARD

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

ELLA GREEN	APPELLANT
VS.	NO. 12-006
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES	RESPONDENT

ORDER OF EAB BOARD, *EN BANC*

Presently before the Mississippi Employee Appeals Board, *en banc*, is the appeal of Ella Green ("Green") from an Order of Hearing Officer Wesla Leech entered on May 8, 2012. Leech's Order was entered following an April 4, 2012, hearing. Green had appealed a written reprimand for a Group One offense for tardiness, a Group Three offense for breach of confidentiality, and a Group Three offense for workplace harassment. The workplace harassment Group Three offense was resolved before the hearing before Officer Leech.[1] Thus, the only two issues to be resolved at Green's April 4, 2012, appeal hearing was the Group One allegation of tardiness and the Group Three allegation of breach of confidentiality.

The genesis of the breach of confidentiality allegation is that on November 11, 2011, Green sent an email to another employee of the Mississippi Department of Human Services ("MDHS"). When Green sent the November 18, 2011, email to the MDHS employee she copied Sherry Whaley, an employee of Missouri DHS. This email contained confidential information of a George County, Mississippi, client. That email to Whaley contained the

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[1]Leech, in her Order, "affirmed in part and reversed in part" Green's appeal of harassment. The Employee Appeals Board, *en banc*, interprets Leech's Order to affirm the finding that was reached at the agency level that Green was not harassed in the workplace, and that Cathy Norwood was to act as Green's supervisor when Norwood was on leave. If Norwood was on leave, Sherry Jackson would supervise Green in Norwood's absence.

information about the Mississippi client's application, the [George] County's action, the County Director's response, and other non-public information.

Green, at her April 4, 2012, appeal hearing, stated that she did not copy Whaley as a result of an intentional act and that she made a mistake. Transmitting information regarding [redacted] to Sherry D. Whaley, a person who was not employed by MDHS and, who was in no manner involved in the administration of benefits through the Mississippi Division of Economic Assistance, was a breach of security in violation of Mississippi, Vol. V, Ch. 1 and MSPB Handbook, Ch. 7, I.C.15. The fact that Ms. Green's email to Sherry D. Whaley may have been unintentional or a mistake is irrelevant. Regardless of whether Green intended to disclose confidential information regarding a Mississippi DHS applicant, MDHS was put at risk due to the information being exposed to a person unassociated with the administration of the Mississippi Division of Economic Assistance and private information of a client was provided to an individual that should not have received the information.

The next issue for which Green sought relief at the April 4, 2012, appeal hearing was MDHS' assessment of a Group One offense against her for tardiness. The record reflects that Green's daily work schedule was 8:30 a.m. to 5:30 p.m. On at least four separate occasions, between August 31 and November 28, Green was late for work. Specifically, those times were August 31, 2011, November 2, 2011, November 21, 2011, and November 28, 2011. The November 21, 2011, tardiness was excused by MDHS, but MDHS did not excuse the other three tardies of Green.

Green did not provide credible evidence at her April 4, 2012, appeal hearing to establish that her tardiness should have been excused. Specifically Green, in regard to her

August 31, 2011, tardiness, said she signed in at the wrong time. In regard to her November 2, 2011, tardiness, Green claimed she said she had to take a family member to the airport. Finally, her November 28, 2011, tardiness was because she had to take a violin to her daughter at school. Green did not seek her supervisor's permission to be late. It is also worth noting that the record also contains other incidents of Green being tardy where she was not provided a formal write-up, but was simply counseled about her tardiness.

Green had the burden of proof at her April 4, 2012, appeal hearing. The Mississippi Supreme Court has explained that the administrative rule which places the burden of proof/persuasion on the employee is not merely semantics. Specifically, the Mississippi Supreme Court stated in *Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999) the following:

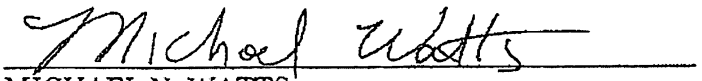
> The statute and administrative regulations clearly place the burden of persuasion on the aggrieved employee to demonstrate that the reasons given are not true. Rule 17, Administrative Rules of the Mississippi Employee Appeals Board; Miss. Code Ann. § 25-9-127 (1972). ... This is not mere semantics. Under our scheme, in a nutshell, ties go to the appointing authority. <u>That is, unless the employee carries the burden of persuasion that the alleged conduct did not occur, the employee has no right to have the employment decision overturned</u>. *Mississippi Employment Security Commission v. Collins*, 629 So. 2d 576, 580 (Miss. 1993); Miss. Code Ann. § 25-9-127. (Emphasis added)

In this case, the hearing officer found as a fact that Green failed to meet her burden of proof. Findings of fact by a hearing officer, if they are supported by credible evidence, will not be disturbed on appeal. In this case, there is credible evidence and sufficient facts in the record for Officer Leech to have found the facts as she did. Accordingly, Green's

appeal to the full Employee Appeal Board requesting Hearing Officer Leech's Order of May 8, 2012, be reversed is DENIED and her appeal is DISMISSED WITH PREJUDICE.

SO ORDERED, on this the 12 day of December, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD,
En Banc



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