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BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD
EMPLOYEE APPEALS BOARD

SAMANTHA ARD

APPELLANT

VS.

NO. 12-050

MISSISSIPPI DIVISION OF MEDICAID

RESPONDENT

ORDER

A hearing was held on Samantha Ard's appeal on the 2nd day of November, 2012. Samantha Ard (hereinafter "Ard" or "Appellant") represented herself. The Mississippi Division of Medicaid (hereinafter "MDOM") was represented by Paige Biglane and Abbie Koonce.

FINDINGS OF FACT

1. Ard is a female under the age of 40 and whose race is black.
2. Ard submitted an application for employment with the MDOM on September 21, 2004. Ard's employment application was a State document.
3. Ard, on her September 21, 2004, employment application, represented that she had completed [REDACTED]
[REDACTED]
4. At all material times, Ard was an employee of the MDOM.
5. Ard began her employment with the MDOM on March 7, 2005.
6. Ard was terminated from the MDOM with an effective date of termination of August 31, 2012.
7. At the time of Ard's termination, she held a position of employment within the MDOM's Bureau of Program Integrity.

This order has been partially redacted of information exempted pursuant to the Mississippi Public Records Act, other statutory exemptions or court order.

8. MDOM's Bureau of Program Integrity employees are responsible for investigating and determining if fraud has occurred or if false information has been submitted to Medicaid by medical providers.

9. On December 2, 2011, Robert Robinson, Executive Director of the Division of Medicaid, issued a memorandum to all Medicaid employees. The December 2, 2011, memorandum required all current Department of Medicaid employees to provide the Bureau of Human Resources (BHR) an official educational transcript or a copy of their degree for verification purposes by January 31, 2012.

10. Ard did not provide the MDOM Bureau of Human Resources an official JSU transcript or a copy of a degree from JSU by January 31, 2012.

11. Prior to Executive Director Robinson's request, on March 26, 2007, Ard applied for a position as a Medicaid Investigator I. On her March 26, 2007, application, Ard represented she had completed [REDACTED], and that she had obtained a [REDACTED]. Ard's March 26, 2007, application was a State document.

12. On May 26, 2010, Ard submitted an application for the position of Medicaid Investigator II. On her May 26, 2010, application, Ard represented that she had completed [REDACTED]. Ard's May 26, 2010, application was a State document.

13. On March 8, 2012, Ard submitted an application to the Division of Medicaid for the position of Performance Auditor I. On her March 8, 2012, application, Ard represented that she had completed [REDACTED]. Ard's March 8, 2012, application is a State document.

14. A JSU Transcript of Academic Record for Ard was submitted to the MDOM. The transcript was issued June 6, 2012, and the transcript was submitted to the MDOM no earlier than June 6, 2012.

15. Ard's June 6, 2012, JSU Transcript of Academic Record stated that Ard attended JSU from [REDACTED].¹

16. Ard's June 6, 2012, Transcript of Academic Record from JSU confirmed that Ard completed [REDACTED] while a student at JSU.

17. Ard's June 6, 2012, Transcript of Academic Record from JSU confirmed that Ard's GPA following her last semester at JSU was [REDACTED].

18. Ard received an Associate of Arts Degree in Applied Business in Business Office Technology - Medical Assisting from Antonelli College on December 11, 2003.

19. Ard provided a copy of her Antonelli College degree to MDOM by January 31, 2012.

20. Ard, prior to being terminated from MDOM, was provided her pre-termination conference.

21. MDOM based Ard's August 31, 2012, termination on the allegation that Ard committed four (4) Group III. No. 4 Offenses. Specifically, Ard's August 30, 2012, termination letter alleged as follows:

Group III Offense, No. 4 - "falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official State documents."

¹The Fall, 2011, date appears incorrect as other evidence suggests the last date Ard attended JSU was the [REDACTED].

Specifically - On September 21, 2004, you submitted a State of Mississippi Employment Application to the Mississippi State Personnel Board (MSPB) for a Medicaid Specialist declaring you attended [REDACTED]

On March 26, 2007, you submitted a second State of Mississippi Employment Application to MSPB for a Medicaid Investigator declaring you attended [REDACTED]

On May 26, 2010, you submitted a third State of Mississippi Employment Application to the agency for a Medicaid Investigator II declaring you attended [REDACTED]

On March 8, 2012, you submitted a fourth State of Mississippi Employment Application to the Agency and MSPB for a DOM Performance Auditor I declaring you attended [REDACTED]

CONCLUSIONS OF LAW

Ard, as the Appellant, has the burden of proof on her appeal. *See, Mississippi State Personnel Board Policy and Procedures Manual 10.7.21(b)*. 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. 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. *Mississippi Employment Security Commission v. Collins*, 629 So. 2d 576, 580 (Miss. 1993); Miss. Code Ann. § 25-9-127.

Thus, to prevail on her appeal, Ard must prove that either (1) the allegations upon which her termination were based are not true or (2) if true, those facts were not sufficient grounds for the action taken against Ard by the MDOM.

Having considered the credibility of Ard and Nicole Litton, the only two witnesses who testified at Ard's appeal hearing, and having considered all the exhibits that were introduced into evidence at Ard's appeal hearing, the undersigned finds that Ard failed to meet her burden of proof, or her burden of persuasion, that MDOM's allegation she falsified "records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official State documents" were untrue. The reasons for my opinion follow.

Ard submitted her initial application for MDOM employment on September 21, 2004. Ard's JSU transcript confirms that the last date Ard attended JSU prior to her September 21, 2004, application to MDOM was [REDACTED]. Thus, Ard's September 21, 2004, application was submitted within [REDACTED].

Ard, at her appeal hearing, contended she did not intend to mislead MDOM. She contended that when she left JSU she did not obtain a transcript and did not, when she filled out her various applications, recall the number of hours she had obtained at JSU.

However, on her September 21, 2004, application, Ard did not overstate her hours earned at JSU by just a few hours. Ard overstated her semester hours by one hundred (100)

hours. Her overstatement of her earned semester hours at JSU was significant and the misstatement was made within a relatively short period of time of her last attending JSU. I do not find it credible that Ard did not know on September 21, 2004, the time of her submission of her application, that she had not completed 180 semester hours at JSU.

Further, Ard also failed to meet her burden of proof/persuasion that her overstatements of her hours from JSU as set forth on her March 26, 2007, May 26, 2010, and March 8, 2012, applications were simply because of a mistake. In addition to the reasons already stated in this Order, I note that Ard also significantly overstated her JSU grade point average on her March 26, 2007, and May 26, 2010, MDOM applications. Specifically, Ard stated on each of those applications that her [REDACTED]. In fact, Ard's JSU grade point average as reflected by her [REDACTED]. Such a significant overstatement of her JSU grade point average, like her overstatement of her completed JSU semester hours, further indicates that Ard's contention that her overstatements were mistakes is not credible.

In addition, Ard did not provide MDOM a copy of her JSU transcript in a timely fashion as requested by the MDOM. Ard did provide MDOM, in a timely manner, a copy of her Antonelli College transcript. Ard provided no legitimate reason why she did not provide her JSU transcript within the time requested by MDOM. Given that Ard's JSU transcript did not confirm, but in fact, refuted the semester hours Ard stated on all of her MDOM applications, suggests Ard's failure to timely provide MDOM transcripts was

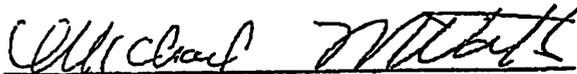
intentional and with the hope MDOM would not discover the erroneous information on her various applications.

Although Ard did not, in her Notice of Appeal to the EAB, allege she was terminated because of race or color, during her hearing she made reference to a situation while employed at MDOM where a supervisor made a racial statement to her. This incident is the only reference by Ard of a discriminatory reason for her termination and the only evidence introduced in support of any alleged discrimination. Having considered the facts introduced through the witnesses at the EAB hearing and the exhibits introduced into evidence under the framework of *McDonnell Douglas Corp v. Green*, 411 U.S. 792 (1973), the undersigned finds that Ard's termination was not, in whole or in part, based on her race or color or any other discriminatory ground. MDOM's stated reasons for terminating Ard's falsification of a State document were not a pretext for Ard's termination. Rather, Ard's termination was a result of Ard's overstatement of her semester hours at JSU on the four applications she submitted to the MDOM.

Because Ard failed to meet her burden of proof or persuasion and prove that the MDOM's allegations upon which it based Ard's termination were untrue, her termination is **AFFIRMED**. Ard's complaint is dismissed, with prejudice.

SO ORDERED THIS THE 3 DAY OF December, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: 
MICHAEL N. WATTS
Presiding Hearing Officer