

FILED
MAR 19 2013

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

EMPLOYEE APPEALS BOARD

LESSIE MAE BENDER

APELLANT

VS.

NO.13-009

**MISSISSIPPI DEPARTMENT OF
MENTAL HEALTH, ELLISVILLE STATE SCHOOL**

APELLEE

ORDER

Appellee, Mississippi Department of Mental Health (MDMH") filed a Motion to Dismiss for Untimely Filing and Failure to Allege A Legally Adverse Action in the instant matter, on February 15, 2013. A hearing on the motion was held by telephone on March 6, 2013. The Appellant, Lessie Mae Bender, represented herself and Gene Rowzee represented MDMH.

Lessie Mae Bender is employed by MDMH as a Program Coordinator at Ellisville State School. Bender applied for and interviewed for a position as a Director V at Ellisville State School. When Bender was not chosen for that position she filed a grievance alleging discrimination on the basis of age and race as well as retaliation, and requested that she be given the Director V position. Bender's grievance was not substantiated and she was not granted any relief. Consequently, Bender timely filed an appeal of that grievance (Docket No. 21-060) with the Mississippi Employee Appeals Board. While that appeal was pending, Bender filed another grievance with MDMH alleging that she had been retaliated against because she had filed the original grievance and appeal

(Docket No. 12-060) regarding the Director V position. The second grievance procedure was completed on November 16, 2012, and forwarded to the Mississippi Appeals Board on November 27, 2012.

Bender believed that her second grievance would be filed as an amendment to the first appeal (Docket No. 12-060) and considered at the hearing of that appeal. Due to this misunderstanding of the MEAB procedures, Bender was allowed to complete a notice of appeal, which was file stamped on February 4, 2013.

In its Motion to Dismiss MDMH argues that Bender was late in filing her appeal. After the second grievance procedure was completed on November 16, 2012, Bender filed a copy of the grievance with the MEAB on November 28, 2012. That filing was within the 15 days allowed by rule to appeal a grievance to the MEAB. Bender testified at the hearing on her original appeal that, based on her communication with the MEAB, she believed that her second grievance was to be considered as an amendment to her first appeal. Given this misunderstanding; that Bender was acting pro se; and the fact that Bender had timely filed the second grievance with the MEAB -- granting Bender leave to complete her second appeal and proceed with that appeal was within the discretion of the Hearing Officer.

MDMH further argues that the MEAB is restricted by statute to reviewing actions adversely affecting employment status and that Bender did not grieve an action adversely affecting employment status.

MCA 25-9-131 states in part that "[a]ny employee in the state service may appeal his dismissal or other action adversely affecting his employment status to

the employee appeals board . . ." Additionally MEAB Rule XXIV governs the relief to be granted to the Appellant and provides that the MEAB may restore employee rights and benefits or modify an agency action.

In Bender's grievance she states that, in a meeting with the Assistant Director of Ellisville, it was suggested that Bender was unable to provide sufficient attention to her clients because of her first appeal (Docket No. 12-060), and that she might need to enroll in the employee assistance program for anger issues. Bender also claimed that, in another meeting, she was reminded of her position as a time limited employee. Additionally, Bender claimed that she was relieved for a 15 minute break by a clerk typist. While such actions by the MDMH, if true, could constitute harassment, no "adverse action" was taken against Bender and thus the MEAB is unable to provide any relief.

For the foregoing reasons MDMH's motion is granted and this appeal is dismissed.

SO ORDERED THIS THE 18th DAY OF March 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY: 
INGRID DAVE WILLIAMS
Hearing Officer