

FILED
MAR 19 2013

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

TRENT FRANKLIN

APPELLANT

VS.

NO. 13-005

MISSISSIPPI DEPARTMENT OF CORRECTIONS

RESPONDENT

ORDER

Presently before the Mississippi Employee Appeals Board is the appeal of Trent Franklin (hereafter "Mr. Franklin"). A telephonic prehearing conference was held on March 8, 2013. Mr. Franklin represented himself and the Mississippi Department of Corrections (hereafter "MDOC") was represented by David Scott.

During that conference, the undersigned hearing officer discussed with Mr. Franklin and Mr. Scott the fact that Mr. Franklin's Notice of Appeal was filed on January 11, 2013, and that it may not have been filed timely.

Mr. Scott stated that the MDOC Personnel Department records show that Mr. Franklin had received notice of his November 27, 2012, suspension on December 4, 2012. When Mr. Franklin was asked by the undersigned hearing officer if the date of December 4, 2012, was the date he received notice of his November 27, 2012, suspension, he stated he did not know. Mr. Franklin was provided until March 15, 2013, to submit evidence to refute the MDOC's contention that he received notice of his November 27, 2012, suspension on December 4, 2012.

Mr. Franklin on Monday, March 18, 2012, provided the Mississippi Employee Appeals Board faxed documents to the Mississippi Employee Appeals Board presumably to refute the MDOC's contention that he received written notification of his November 27, 2012, suspension on December 4, 2012. However, nothing in those documents refute that

Mr. Franklin received the November 27, 2012, suspension letter after December 4, 2012.

The *Mississippi State Personnel Board Policy and Procedures Manual* provides in pertinent part:

Rule 10.7.V. Perfection of Appeal by Timely Filing.

A.

...

B. A Notice of Appeal must be filed within fifteen days after the date a person receives written notification of the final decision of an alleged grievable action or within fifteen days of the first attempted delivery date by certified mail, return receipt requested, whichever occurs first.

Mr. Franklin has not provided evidence to contradict the MDOC's position that Mr. Franklin received written notice of his November 27, 2012, suspension on December 4, 2012. Based on the date of receipt of December 4, 2012, Mr. Franklin should have filed his Notice of Appeal by December 19, 2012. Because his Notice of Appeal was not filed with the Mississippi Employee Appeals Board until January 11, 2013, the Mississippi Employee Appeals Board lacks jurisdiction to hear his appeal. Accordingly, Trent Franklin's appeal of his November 27, 2012, suspension as set forth in his suspension letter of the same date is hereby dismissed without prejudice, subject to him establishing that he timely filed his Notice of Appeal.

SO ORDERED THIS THE 19 DAY OF MARCH, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: Michael N. Watts
MICHAEL N. WATTS
Presiding Hearing Officer