

**FILED**  
**OCT 04 2013**

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**EMPLOYEE APPEALS BOARD**

**MAGGIE MCCLELLAN**

**APPELLANT**

**VS.**

**NO. 13-049**

**MISSISSIPPI DEPARTMENT OF CORRECTIONS**

**RESPONDENT**

**ORDER DISMISSING CASE FOR  
LACK OF SUBJECT MATTER JURISDICTION**

Pursuant to the undersigned hearing officer's request, a hearing was held on September 13, 2013, to address the issue as to whether or not the Appellant, Maggie McClellan (hereafter "McClellan"), had timely filed her Notice of Appeal. McClellan was provided a suspension letter dated August 1, 2013, by the Mississippi Department of Corrections (hereafter "MDOC") suspending McClellan without pay for thirty (30) working days with an effective date of August 12, 2013. McClellan verified she received her notice of suspension on August 6, 2013. McClellan's Notice of Appeal was filed with the Mississippi Employee Appeals Board on August 22, 2013.

Section V(B) of the Administrative Rules of the Mississippi Employee Appeals Board provides that McClellan was required to file her Notice of Appeal within fifteen (15) days after written receipt of the adverse employment decision of suspension. McClellan's appeal was not filed until August 22, 2013, which is sixteen (16) days after the date she received written notice of her suspension.

The Mississippi Supreme Court has held that the specified time limit for an appeal cannot be extended absent some event, not caused by a party, affecting that party's substantial rights. *Mississippi Employment Sec. Comm'n. v. Powell*, 787 So. 2d 1277 (Miss. 2001). This principle has been repeatedly and uniformly applied by the Mississippi Supreme Court. The Mississippi Supreme Court, in *Wheat v. City of Picayune*, 631 So. 2d

141 (Miss. 1994), stated:

Allowing any deviation on timeliness presents a serious problem. If this Court allows this appeal to be filed one day late, what does the Court do about an appeal filed two days, or three days late? When will late be too late and where should the line be drawn? The law provided Wheat forty (40) days in which to file his notice of appeal to the circuit court. He filed on the forty-first (41st) day, therefore, he filed late, albeit only one day. Again, the question arises, "When is late TOO LATE?" This Court follows the rules set forth in Rule 7.03 of the Uniform Criminal Rules of Circuit Court Practice and Miss. Code Ann. Sec. 99-35-1 and holds that to appeal from a municipal court to the circuit court in a criminal case, the appeal must be brought within forty (40) days of the entry of judgment against the defendant. "A rule which is not enforced is no rule." *Tandy Electronics, Inc. v. Fletcher*, 554 So.2d 308, 312 (Miss. 1989) (quoting *Box v. State*, 437 So.2d 19, 21 (Miss.1983)).

McClellan argues that the "mailbox rule" applies and that since she mailed her Notice of Appeal within fifteen (15) days of her written receipt of her August 1, 2013, suspension letter, her filing of her appeal was timely. This tribunal disagrees. Mississippi Employee Appeals Board Administrative Rule V(B) is clear that the Notice of Appeal "shall be filed" within fifteen days of written receipt.

McClellan also argues that because she was represented by counsel at her pre-termination hearing on August 1, 2013, and the notice of suspension was not mailed to him, that the fifteen day period set forth by Rule V(B) of the Administrative Rules of the Mississippi Employee Appeals Board did not begin to run on August 7, 2013. McClellan contends that Miss. Code Ann. § 25-43-1.106(2)(b) required the MDOC to forward the August 1, 2013, letter to her counsel because he represented her at the agency level pre-disciplinary hearing. McClellan's reliance on Miss. Code Ann. § 25-43-1.106(2)(b) is misplaced. That section of the Mississippi Code does not apply to employee disciplinary

matters at the agency level and it does not apply to matters before the Mississippi Employee Appeals Board.

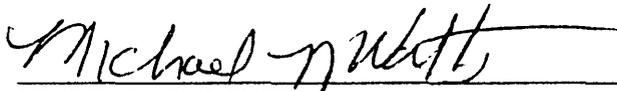
Miss. Code Ann. § 25-43-1.101 Title, Statement of Purpose, provides:

1. . . . .
2. . . . . "This chapter is meant to apply to all rule-making that is not specifically excluded from this chapter . . ."  
(Emphasis added).

For the above reasons, this tribunal finds that neither the mailbox rule, nor Miss. Code Ann. § 25-43-1.106(2)(b), provides a basis to support McClellan's contention that her appeal was timely filed. Because McClellan's appeal was not filed within fifteen (15) days of her written receipt of her suspension, the Mississippi Employee Appeals Board lacks subject matter jurisdiction and McClellan's appeal is DISMISSED, with prejudice.

SO ORDERED, THIS THE 4 DAY OF OCTOBER, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:   
MICHAEL N. WATTS  
Presiding Hearing Officer