

FULL BOARD OF THE MISSISSIPPI EMPLOYEE APPEALS BOARD

VERGANELL T. CRAIG

FILED

APPELLANT

VS.

NOV 25 2014

NO.14-018

MISSISSIPPI DEPARTMENT OF
HUMAN SERVICES

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER OF MEAB BOARD, EN BANC

Appellant, Verganell T. Craig, filed an appeal to the Employee Appeals Board, *en banc*. Craig appealed the Order entered by Hearing Officer Ray Therrell on August 11, 2014. The EAB, *en banc*, has reviewed the briefs of the parties and the record in this matter. The EAB, *en banc*, affirms the decision of Hearing Officer Therrell and affirms the termination of Craig by MDHS. The reasons for the EAB, *en banc*, opinion are set forth below:

FACTS

Craig was employed as a Family Protection Specialist with MDHS. In that position Craig provided case management services to MDHS clients and conducted investigations, and provided training to MDHS clients. To perform her job, Craig frequently drove from 5 to 70 miles per day. Craig injured herself at work on, April 3, 2014. Craig was released to return to work, with restrictions, including a restriction on driving. Because Craig was unable to perform the essential functions of her job, MDHS attempted to provide accommodation by offering her a

position as an Eligibility Worker I. Craig refused that offer because the position required a decrease in salary and status. As a result of continuing health problems from her injury, Craig was placed on leave pursuant to the Family Medical Leave Act ("FMLA") from November 6, 2013, through January 8, 2014. After Craig's FMLA leave expired, she continued to provide non specific medical excuses to MDHS indicating that she could not return to work. On March 18, 2014, MDHS informed Craig that no further leave would be approved and that she was expected to return to work on March 25, 2014. Craig failed to report to work.

On May 15, 2014, MDHS terminated Craig for a Group Three Number One offense of "unauthorized absence or leave in excess of three (3) consecutive working days without required notification and satisfactory explanation to the supervisor or appointing authority in a timely manner;" and a Group Three , Number 14 Offense of " [a]n act or acts of conduct occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public or to other State employees."

A hearing was held before EAB Hearing Officer Therrell on July 9, 2014. In the Order, of August 11, 2014, Hearing Officer Therrell concluded as follows:

MDHS's termination of Craig was supported by the evidence.
.. Craig failed to provide a satisfactory explanation to MDHS

for her failure to return to work . . . If an employee fails to report to work for an extended period of time, it is evident that the employee's absence affects MDHS's ability to provide the services to which the public is entitled. When an employee fails to provide an adequate reason for a continual absence MDHS is bound to terminate that employee so that it can provide necessary services, and failure to do so could constitute negligence in regard to the Agency's duties to the public.

On August 23, 2014, Craig filed the instant appeal, requesting review of the Hearing Officer's Order, to the Employee Appeals Board, *en banc*.

OPINION

In her appeal Craig apparently asserts that there was insufficient evidence to support the hearing officer's decision. At the initial EAB hearing, the burden is on the employee to show that reasons for the agency's decision are not true or are not sufficient grounds for the action taken. The evidence showed that, after her FMLA leave expired, Craig provided MDHS with non specific medical excuses at two week intervals; that she refused to accept a position which could accommodate her restrictions; and that she could not perform the essential functions of her job as a Family Protection Specialist. Craig did not show that that these facts were not true, or that they were not sufficient grounds to support her termination.

For the foregoing reasons the EAB, *en banc*, finds that the Hearing Officer was correct in finding that Craig had committed a Group Three Number One offense and a Group Three Number 14 offense.

Craig also complains that the Hearing Officer continued to talk to the MDHS agency representative and their attorney after the hearing was adjourned. Craig asserts that she should have been included in the discussion. Craig does not allege, nor is there evidence that the Hearing Officer and the MDHS attorney and representative were discussing the instant matter. Social discourse prior to, during, and following a hearing is not subject to appeal.

For the foregoing reasons the Order of Hearing Officer Ray Therrell, affirming MDHS' termination of Craig, is affirmed.

SO ORDERED this the 25th day of November, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD
FULL BOARD

BY:


INGRID DAVE WILLIAMS
Hearing Officer