

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

CEDRIC T. PEGUES

**FILED**

APPELLANT

VS.

**DEC 02 2014**

DOCKET NO. 14-022

NORTH MISSISSIPPI REGIONAL CENTER

**EMPLOYEE APPEALS BOARD**

MISSISSIPPI DEPARTMENT OF MENTAL HEALTH

RESPONDENT

**ORDER**

Before the Mississippi Employee Appeals Board is the appeal of Cedric T. Pegues (“Pegues”) from his resignation, and his subsequent attempt to withdraw his resignation, from his Program Coordinator position at the North Mississippi Regional Center/Mississippi Department of Mental Health (“NMRC”). Hearings were held on Pegues’ appeal on August 12, 2014, and October 24, 2014. Pegues represented himself. NMRC was represented by Gene W. Rowzee, Jr.

The genesis of the facts which resulted in the present appeal by Pegues occurred on May 7, 2014. Specifically, on May 7, 2014; a conflict arose between Pegues and another NMRC employee, Brian Simmons. After the disagreement between Pegues and Simmons, Brent Avant, Pegues’ immediate supervisor, updated the cottage assignments for each Program Coordinator. Pegues and the other Program Coordinators were reassigned to different cottages, but Pegues and the other Program Coordinator were not moved off the NMRC campus in Oxford. According to Avant’s testimony, which this tribunal accepts as true, Avant had considered the reassignment before the Simmons/Pegues dispute.

On May 12, 2014, Pegues submitted a Mississippi State Personnel Board grievance form. That grievance form alleged that on or about May 11, 2014, at approximately 4:00 p.m., Brian Simmons violated Mississippi Handbook Chapter 08 8.2D and that Brent Avant violated Chapter 08 8.2G. Pegues’ complaint primarily evolved around his concern that he was not provided due

process in the reassignment of his duties after he had, according to him, provided evidence which indicated that Brian Simmons and others had not been truthful in regard to certain matters.

Pegues submitted his grievance to Kerry Nichols. Nichols was Brent Avant's immediate supervisor. Pegues submitted his grievance to Nichols because his allegation involved an allegation against Avant, his immediate supervisor.

Upon receipt of Pegues' grievance form, Nichols gave the grievance to Avant. Subsequent to Avant receiving Pegues' grievance from Nichols, a meeting was held the morning of May 19, 2014, with Avant, Pegues, and Frank Dodd, Human Resources Director. Dodd appeared at the meeting as a facilitator. Although at the appeal hearings, testimony between the witnesses differed, Pegues' version of the May 19, 2014, meeting between he, Frank Dodd and Avant was that his grievance was not properly considered or handled properly.

On May 19, 2014, at 1:08 p.m. Pegues, by email to Brent Avant, resigned from his employment with NMRC following the meeting earlier that morning between Pegues, Avant, and Dodd. Specifically, Pegues' May 19, 2014, resignation stated "Brent, I am putting in my two weeks notice today. . . I am requesting that my last official day of Fri. 05/30/2014 . . . thx.CP."

On May 19, 2014, at 1:24 p.m., approximately 16 minutes after Pegues emailed his resignation, Avant forwarded Pegues' May 19, 2014, resignation to Frank Dodd, Human Resources Director, and Kerry Nichols, Avant's immediate supervisor. Avant did not, upon receipt of Pegues' May 19, 2014, resignation, acknowledge to Pegues, either orally or in writing, that he had received Pegues' resignation or that it had been accepted.

On May 20, 2014, Brent Avant responded to Pegues' May 12, 2014, grievance and stated "In regard to this grievance: based on the grievance statement and our meeting on 5/19/14, there has

been no evidence submitted that qualifies under Chapter 8.2.D or Chapter 8.2.G. Under relief sought, no employment action to dismiss or otherwise adversely effect your compensation or employment status has been undertaken.” Avant’s response was returned to Pegues by placing the response on Pegues’ desk or chair. Upon receipt of Avant’s May 20, 2014, response to his grievance, Pegues advanced his grievance to the second step by sending it to Kerry Nichols. Nichols took no further action on Pegues’ grievance. Pegues did not advance his grievance to the third step after he failed to receive a timely response from Nichols.

On May 21, 2014, Pegues sent the following email to Brent Avant “Brent, though I haven’t received a response, I’m rescinding my resignation letter submitted for my last official day of Fri. 05/30/2014 . . . apologize for any inconvenience. . . thx. CP signed Cedric T. Pegues, PC.”<sup>1</sup> Pegues ultimately was considered to have resigned from NMRC effective May 30, 2014. .

It is evident that from the time that the initial conflict arose between Pegues and Simmons, that matters escalated ultimately to the point of Pegues submitting his May 19, 2014, resignation. So far as the record is concerned, prior to the May, 2014, Simmons/Pegues incident, Pegues had no significant conflict with anyone at NMRC, had no write-ups or disciplinary action and had been a good employee.

Pegues’ main concerns, and the bases for his appeal, can be distilled as follows:

- (1) that his grievance was not handled properly because when the grievance was initially submitted to Kerry Nichols, Nichols gave his grievance to Avant for handling, even though Pegues’ grievance alleged a grievance against Avant, his immediate supervisor;
- (2) that Pegues was constructively forced to resign; and

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<sup>1</sup>Pegues also sent a handwritten note to Avant on May 21, 2014, in essence stating what his May 21, 2014, email stated.

- (3) that Mississippi law allowed Pegues to withdraw his resignation before his resignation was accepted in writing, and that he in fact withdrew his resignation timely because NMRC never accepted his May 19, 2014, resignation in writing.

Each of Pegues' contentions is addressed below.

Pegues' complaint that his May 12, 2014, grievance was not properly handled is based on his contention that he initially gave his grievance to Kerry Nichols, not Brent Avant, because his grievance contained an allegation against Avant, his immediate supervisor, and his immediate supervisor should not have been within the decision making authority on his grievance. A review of Pegues' grievance form submitted on May 12, 2014, shows that his grievance against Brent Avant consisted of the grievable issue of "permanent relocation of an employee as a disciplinary measure, and/or where the employee can present substantive evidence that the management decision to relocate the employee was arbitrary or capricious." See, Pegues' May 12, 2014, grievance form and *Mississippi State Employee Handbook (7/1/2014)* 8.2g.<sup>2</sup> Pegues' allegation against Avant does not include an allegation of discrimination against Avant. Pegues' allegation of discrimination was limited to an allegation against Brian Simmons who was not Pegues' supervisor or in the disciplinary procedure chain of command.

Section 8.5 of the *Mississippi State Personnel Employee Handbook* contains the following

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<sup>2</sup>While 8.2g provides that permanent relocation of an employee under certain circumstances is a grievable offense, as noted earlier in this opinion, Pegues did not advance his grievance to the third step of the grievance process so no final decision was made at the agency level. Pegues' failure to properly advance his grievance to the third level was a waiver by Pegues of his grievance. Accordingly, there is no final agency level decision for review by the Employee Appeals Board on Pegues' 8.2g grievance. See, *Mississippi State Personnel Board Policy and Procedures Manual* 10.4. (Exhausting Remedies) and *Mississippi State Employee Handbook* 9.3. Even if Pegues had advanced his grievance to the third step and properly appealed to the EAB, Pegues did not meet his burden of proof that his reassignment to a different cottage was arbitrary or capricious. This is so because Avant had considered the reassignment before Pegues filed his grievance and because Pegues was not transferred off the Oxford campus and there were no substantive changes in his job responsibilities.

section "Special Procedure for Claims of Harassment or Discrimination." That section of the *Mississippi State Employee Handbook* provides that if the employee's grievance is an unlawful discrimination or harassment and the source of the alleged discrimination or harassment is in the employee's chain of command, the employee may skip the source of the alleged discrimination or harassment level of management by proceeding to the next step in the process and filing the grievance directly with the discriminating or harassing supervisor's superior. This tribunal, having considered Pegues' grievance form and the testimony of all witnesses, finds as a fact that Pegues' allegation against Brent Avant did not include an allegation of discrimination or harassment. Therefore, it was not improper for Nichols to provide Pegues' grievance to Avant during the Step I grievance process.

Pegues also contends that in regard to his grievance that he was "placed on an island." While Pegues does not specifically state that the way his grievance was handled left him no choice but to resign, this tribunal interprets his testimony to mean that he had no option but to resign and was in effect constructively forced to resign because of the way NMRC handled his grievance. Pegues has the burden of proof on that allegation. See, Chapter 10, Section 20(B) (Burden of Proof) of the *Mississippi State Personnel Board Policy and Procedures Manual* and *Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999). In *Richmond* the court stated:

The statute and administrative regulations clearly place the burden of persuasion on the aggrieved employee to demonstrate that the reasons given are not true. 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.

Having considered all the evidence introduced at the two days of appeal hearings, including the exhibits and testimony of all witnesses, this tribunal finds as a fact that Pegues was not constructively discharged or forced to resign. The facts indicate that Pegues became upset at the way his grievance was handled. However, Pegues did not complete the grievance process by advancing his grievance as he was required to do when Nichols did not timely respond to Pegues' second step in the grievance process. Rather than resigning, Pegues should have advanced his grievance to the third step.

Pegues, at his appeal hearings, admitted that he was offered assistance from the Human Resources Director to advance the grievance process, but Pegues refused the Human Resources Director's offer of assistance. In addition, Pegues testified that before his resignation he discussed his potential resignation with his wife. Further, Pegues had considered retiring months before May, 2014. Based on these facts, this tribunal finds as a fact that Pegues' May 19, 2014, resignation occurred not because he was threatened or forced to resign by any of Pegues' supervisors but because he became upset and angry with the Brian Simmons/Pegues conflict and how Pegues' grievance was being handled by his superior. Pegues made a conscious, voluntary decision to resign.

Pegues next contends that he had a right to withdraw his resignation so long as NMRC had not accepted his resignation in writing before his rescission of his resignation. Pegues bases his contention on the case of *Blackwell v. Miss. Board of Animal Health*, 784 So. 2d 996 (Miss. App. 2001). NMRC, on the other hand, contends that *Blackwell* does not require written acceptance of an employee's resignation for it to be accepted by the employer. According to NMRC, *Blackwell* requires only that NMRC accept Pegues' resignation before it was withdrawn.

In *Blackwell*, Blackwell, an employee of the Mississippi Board of Animal Health, submitted her resignation in writing to the Board of Animal Health on September 3, 1997, with her effective date of resignation being April 11, 1998. On March 18, 1998, Blackwell sent a letter to the Director of the Board Animal Health requesting that her letter of resignation be withdrawn. Subsequently, the Board of Animal Health advised Blackwell that she would not be allowed to withdraw her resignation. Blackwell, aggrieved by the Board of Animal Health's refusal to allow her to rescind her resignation, appealed. Blackwell's appeal was ultimately adjudicated by the Mississippi Court of Appeals. The *Blackwell* court held that once accepted, the resignation of an employee cannot be unilaterally rescinded by the employer. See, *Blackwell v. Miss. Board of Animal Health*, 784 So. 2d 996, 999-1001 (Miss. App. 2001). As noted earlier, Pegues contends that *Blackwell* requires that the state agency must accept the resignation in writing before the employee withdraws his resignation.

This tribunal, having carefully considered *Blackwell*, does not read *Blackwell* to require that the state agency must accept an employee's resignation in writing to be effective. *Blackwell's* holding is that the stage agency must only accept the resignation of the employee prior to it being rescinded by the employee. Specifically, the *Blackwell* Court of Appeals did not in its holding state that the acceptance by the employer must be written. Since the Court of Appeals did not limit its holding, this tribunal does not interpret there to be a requirement that the state agency must accept the resignation in writing for its acceptance to be effective. The state agency need only accept the employee's resignation before the employee withdraws his resignation. In this case, the testimony of Frank Dodd established that he received Pegues' resignation on May 19, 2014. Dodd's testimony is confirmed by the email from Avant to Dodd and Kerry Nichols on May 19, 2014. Further, Dodd

testified at Pegues' appeal hearing, and in an affidavit submitted in this matter and introduced into evidence (*see* Exhibit 10) that Pegues' resignation was accepted on May 19, 2014, and that Dodd began out-processing Pegues the following day, May 20, 2014.

The burden of proof was on Pegues to establish that NMRC did not accept his resignation before his attempted withdrawal of it on May 21, 2014. *See* Rule 20, Chapter 10 of the *Mississippi Personnel Board Policy and Procedures Manual dated 7/1/2014* and *Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999). *Supra*. Pegues did not meet his burden of proof on that issue.

In summary, having considered all exhibits admitted into evidence, the testimony of all witnesses, having evaluated the credibility of all witnesses, this tribunal finds as a fact that Pegues failed to meet his burden of proof that the NMRC did not accept his resignation on May 19, 2014, as testified to by Dodd. Pegues also failed to meet his burden of proof to establish NMRC did not accept his resignation prior to his attempt to withdraw the resignation.

For all the above reasons, this tribunal finds that Pegues' resignation was effective May 30, 2014. Pegues' appeal is dismissed, with prejudice.

SO ORDERED, THIS THE 1 DAY OF DECEMBER, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:



MICHAEL N. WATTS

Presiding Hearing Officer