

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

ANDRE FUNCHES

FILED

APPELLANT

VS.

DEC 03 2013

NO.13-031

MISSISSIPPI DEVELOPMENT
AUTHORITY

EMPLOYEE APPEALS BOARD APPELLEE

ORDER

This cause came on for hearing on July 10, 2013, in Jackson, Mississippi. The Appellant, Andre Funches appeared pro se, and Royce Cole represented the Mississippi Development Authority ("MDA").

SUMMARY

Andre Funches is employed as a MDA-Associate Manager Finance. In October of 2012, MDA posted a job opening for the position of MDA-Associate Manger Finance Senior. Funches applied for that position and was not chosen. Beginning in December of 2012, Funches filed a series of six grievances involving MDA's decision not to hire him for the MDA-Associate Manager Finance Senior position. Funches filed the third grievance on December 6, 2012. In that grievance Funches alleged that he had been discriminated against on the basis of his sex. The grievance process for that grievance was completed on January 24, 2013. Thereafter, on February 7, 2013, Funches filed an appeal of that grievance with the Mississippi Employee Appeals Board ("MEAB"). When Funches filed that appeal with the MEAB, in his statement, he alleged that his second level supervisor, Brian Daniel, had a mistress, Candice Barnett, also an employee at MDA, who had received

professional favors in the form of promotions. That was the first time Funches had made the allegation regarding Daniel and Barnett. Consequently MDA was compelled to investigate the allegation regarding Daniel and Barnett. During MDA's investigation of that allegation, on March 24, 2013, Funches received a written reprimand for ". . . refusing to cooperate and/or giving a false statement in an investigation of possible violation of MSPB policies and procedures." On April 2, 2013, Funches filed a grievance regarding the reprimand. On April 22, 2013, when the grievance process was completed at MDA the reprimand was retracted and removed from Funches' personnel file. However, Funches did not receive any other requested relief in response to that grievance and subsequently he filed an appeal of that grievance with the MEAB on May 6, 2013. In his appeal Funches alleged that the written reprimand was retaliatory and that he was entitled to additional relief beyond the removal of the grievance. This Tribunal finds that the reprimand was not retaliatory and that Funches is not entitled to any additional relief. Therefore this matter is dismissed

FINDINGS

On February 7, 2013, Funches filed an appeal with the MEAB. When Funches filed that appeal with the MEAB, in his statement, he alleged that his second level supervisor, Brian Daniel, had a mistress, Candice Barnett, also a MDA employee, who had received professional favors in the form of promotions. That allegation in the MEAB Notice of Appeal was the first time Funches had made that claim. Following that allegation and pursuant to protocol, MDA began an investigation of Funches' allegation with regard to Daniel and Barnett.

MDA decided to hire The Whitten Group, an outside consultant, to investigate the Daniel/Barnett allegation. A series of communications and miscommunications between Cindy McKey, the MDA Human Resources Director, Funches and Amy Whitten, of the Whitten Group, began. Because Whitten's presence in an office can exacerbate office tensions, Whitten prefers to interview any witnesses in her own offices rather than her client's offices. On February 26, 2013, McKey, called Funches and notified him that the appeals that he had filed with the MEAB regarding his failure to be hired for the MDA-Associate Manager Finance Senior had raised "some new things that concerned me." She also told Funches that MDA had hired the Whitten Group and asked him to contact Whitten. Although McKey did not specifically tell Funches the reason for the investigation, Funches was well aware of why MDA had hired the Whitten Group. On the same day, McKey also sent a follow up e-mail to Funches asking him to contact Amy Whitten at his earliest convenience and giving Funches Whitten's phone number. When Whitten did not hear from Funches within the next week, she again contacted McKey and asked for permission to contact Funches directly by letter. On March 6, 2013, Whitten had McKey hand deliver a letter to Funches. The letter stated that

I understand that you have been contacted twice in the last week by Cindy Mckey, MDA's Human Resources Manager, who provided my contact number and requested that you contact me to set up a confidential interview. To date, I have received no contact from you. . . Your statement of misconduct suggests that you have facts and circumstances which would materially assist me in completing my investigation. Such information is critical to my ability to assist MDA in completing its investigatory obligation.

Whitten went on to urge Funches to call her, and advised him that if she did not

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hear from him by noon on Thursday, March 7, 2013, that she would assume that he would be declining to assist in the investigation. Whitten further stated that if Funches did agree to an interview that she would like to conduct it on March 11, 2013, at her office. Funches called Whitten on Friday, March 8, 2013, and left a voice mail. Whitten returned Funches' call on Saturday, March 9, 2013, and left a voice mail for Funches telling him that she wished to conclude the investigation and directing him to meet with her on Monday, March 11, 2013. On March 11, 2013, McKey sent an email to Funches asking him to call Whitten's office to confirm whether he could make it to the appointment or not. In response to McKey's email, Funches emailed McKey "No, sorry, I'm not taking any of my time off and driving over to her office. . ." Funches failed to keep the March 11, 2013 appointment, and did not make any attempt to contact Whitten to reschedule the appointment.

On March 25, 2013, Funches was reprimanded for a Group Three Number 19 Offense of "willful violation of MSPB policies and procedures, including, but not limited to refusing to cooperate . . . in an investigation of possible violation of MSPB policies and procedures." Thereafter, on April 2, 2013, Funches filed a grievance requesting among other things that the reprimand be removed from his file. On April 22, 2013, in the final response to the Funches' grievance Brent Christensen, Executive Director of MDA, stated that "[Funches] agreed to the meeting [with Whitten], and it occurred on April 19, 2013, as scheduled; therefore the written reprimand will not become a part of your personnel file."

Subsequently, on May 6, 2013, Funches filed an appeal of that grievance

with the MEAB. In that appeal Funches alleged that MDA was retaliating against him for using the grievance procedure, and he requested that he be awarded monetary damages; that Kathy Gelston, the Chief Financial Officer of MDA, be terminated; and the posting of an apology in the Woolfolk Building, where the MDA offices are located.

OPINION

Miss. Code Ann. § 29-9-131 provides that a person may appeal an action adversely affecting his employment. Additionally, *MEAB Rule XXIV. Relief to be Granted*, states that, "A. The order may reinstate a prevailing party into employment . . . and restore all . . . employee rights and benefits"

There was no showing by the Appellant, Funches, that any action adversely affecting his employment other than the written reprimand was taken against him. MDA removed the written reprimand from Funches' personnel file, so there is no action for this tribunal to take with regard to that matter.

There was ample evidence that Funches did not comply with MDA's request to meet with Whitten in a timely manner. Funches attempts to make a case based on the fact that he did not verbally refuse to cooperate with Whitten. Clearly, Funches failure to meet with Whitten under the outlined circumstances could have been construed as refusal on his part, and therefore this tribunal cannot find that the written reprimand was retaliatory in

nature.

With regard to Funches' other claims for relief: Neither the law which established the MEAB nor the rules governing the MEAB allow for this tribunal to award monetary damages. Although it is questionable whether this Tribunal has the authority to grant the posting of any apology with regard to the reprimand of Funches, it is incontrovertible that Funches did not present evidence of any action for which a public apology would be appropriate or necessary. Finally, with regard to the termination of Gelston, discipline of a state employee other than an employee who subjects herself to our jurisdiction is a matter over which this tribunal lacks authority.

For the forgoing reasons this matter is dismissed with prejudice.

SO ORDERED THIS THE 3rd DAY OF December, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY:


INGRID DAVE WILLIAMS
Hearing Officer