

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

PHILANA E. HARRELL

APPELLANT

FILED

VS.

APR 03 2015

DOCKET NO.: 15-001

EMPLOYEE APPEALS BOARD

MISSISSIPPI DEPARTMENT OF
HUMAN SERVICES

RESPONDENT

ORDER

Before the Mississippi Employee Appeals Board is the appeal of Philana E. Harrell (“Harrell” or “Appellant”) for her termination by the Mississippi Department of Human Services (“MDHS”), effective December 22, 2014.

Harrell was employed as a family protection worker with the MDHS. By letter, dated December 22, 2014, Harrell was terminated, effective December 22, 2014. No reason was given for her termination in the notice letter. A hearing was held on Harrell’s appeal on March 3, 2015. During the hearing, exhibits were introduced into evidence and testimony was taken. Harrell represented herself. The MDHS was represented by Kathy Caldwell.

At the time of her termination, Harrell was a non-state service employee of the MDHS. Non-state service employees have no property rights in their positions. *Mississippi State Employee Handbook* Chapter 2, Section 2.2, July 1, 2014. In fact, they may be terminated with or without cause or due process. *Id.* Under the Mississippi Employee Appeals Board (MEAB) rules, non-state service employees may only grieve “acts of discrimination based on political affiliation, race, color, handicap, genetic information, religion, national origin, religious creed, age or disability.” *See Section 9.2 (D) of the Mississippi State Employee Handbook.*

Harrell had the burden of proof at her appeal hearing. See, *Mississippi State Personnel Board Policy and Procedures Manual*, effective date 7/1/2014, Chapter 10 Section 20(B). In *Richmond vs. Mississippi Department of Human Services*, 745 So.2d 254 (Miss. 1999), the Mississippi Supreme 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. Rule 17, Administrative Rules of the Mississippi Employee Appeals Board; Miss. Code Ann. Section 25-9-127 (1972). ... 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 employment decision overturned. *Mississippi Employment Security Commission v. Collins*, 629 So.2d 576, 580 (Miss. 1993); *Miss. Code Ann. Section 25-9-127*.

Specifically, to prevail on her appeal Harrell, because she was a non-state service employee, must prove that she was terminated for a discriminatory reason.

After considering all the exhibits entered into evidence, the testimony of the parties, and having judged all the witness' credibility, the Hearing Officer finds as a fact that Harrell failed to meet her burden of proof that her termination occurred in whole, or in part, because of a discriminatory reason.

In her appeal to the MEAB, Harrell alleged she was wrongly terminated and constant harassment and intimidation against her. Her grievance specifically lists workplace harassment, hostile work environment, abuse of authority, personal/professional conflict, and unethical/unprofessional bias as her reasons for filing the grievance. At the hearing the Regional Director, Anita Twiner, testified there were several incidents/issues, including a physical altercation had occurred on or around December 18, 2014, between Harrell and another employee that warranted her termination. Moreover, Ms. Twiner testified that she not aware of any previous grievances filed by Harrell, nor was she aware of any ongoing harassment against Harrell.

The testimony and demeanor of Harrell and other witnesses clearly establishes that there were significant personality conflicts between Harrell, Twiner, and other employees. It appears through the record that one of the reasons for this conflict was because Harrell felt she was being

harassed and her complaints/grievances about the alleged harassment were not addressed. While these conflicts may have had negative effect on the work environment at MDHS, there is nothing in the record that shows Harrell was the recipient of discrimination based on either "political affiliation, race, color, handicap, genetic information, religion, national origin, religious creed, age or disability." See Section 8.1 of the *Mississippi State Employee Handbook*.

In summary, Harrell was a non-state service employee. So long as her termination was for a non-discriminatory reason, Harrell's termination was appropriate. The Hearing Officer finds as a fact that Harrell's termination from MDHS was not based in whole, or in part, on Harrell's political affiliation, race, color, handicap, genetic information, religion, national origin, religious creed, age or disability as prohibited by the *Mississippi State Employee Handbook* or the *U.S. Constitution* or other law. Harrell's termination is affirmed and her appeal is dismissed, with prejudice.

SO ORDERED this the 3rd day of April, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY:



B. RAY THERRELL, II
Hearing Officer