

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

STACY SMITH, GREG NESTER AND
KRISTOPHER WINGERT

APPELLANT

VERSUS

FILED
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MISSISSIPPI DEPARTMENT OF
PUBLIC SAFETY

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER OF DISMISSAL

On May 5, 2015, The Circuit Court of the First Judicial District of Hinds County entered an Order in the instant matter remanding it to the EAB.

In that order, the Court stated that "[T]his Court has concerns that if it remands directly to the EAB, the EAB may simply deny relief as time-barred for failure to appropriately appeal after the step 4 response. However, this Court would point to *Mississippi Employment Security Commission v. Culbertson*, 832 So. 2d 519 (Miss. 2002)."

Unfortunately the EAB, in fact does not have jurisdiction. Miss. Code §25-9-127 requires that employees follow the State Personnel Board rules prior to an appeal of any decision adversely affecting compensation, and accordingly, the EAB rules require, and required at the time that the employees were initially transferred in 2005, that an appeal from a grievance be filed with the EAB within 15 days after a person receives written notice of the final decision regarding the alleged grievable action.

This tribunal respectfully disagrees that *Culbertson* allows the EAB to take jurisdiction in this matter. In the Remand Order the Court quoted *Culbertson* as follows:

The MESC claims that the EAB did not have jurisdiction over this case because the employees failed to exhaust their administrative remedies before filing these claims. However, the employees' failure to exhaust their administrative remedies in the face of substantial evidence that the MESC did not follow the MSPB rules, will not destroy the jurisdiction of the EAB.

However, the *Culbertson* Court goes on to state as follows:

Substantial evidence was presented that employees were discouraged from filing grievances. In addition, the EAB appears not to have disregarded the rules for utilizing administrative remedies prior to filing a lawsuit, as it recognized these remedies, such as the requirement that the incident must have occurred within seven (7) days of the filing

of a grievance for it to be grievable, in addressing other issues, such as race and sex discrimination.

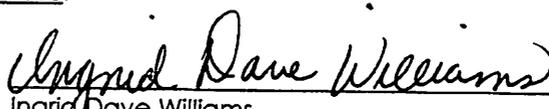
The Court in *Culbertson* found The EAB properly found that it had jurisdiction. In, *Culbertson*, the employees did in fact file an appeal with the EAB in 1996. In the quote from *Culbertson*, in the Order of Remand, it would appear that the Supreme Court, in referring to the failure to exhaust administrative remedies was referring to a purported failure at the agency level.

Additionally, the Mississippi Supreme Court has made it clear that state employees cannot make an end run, and appeal directly to the Circuit Courts, but are required to follow the administrative procedures provided by the state and appeal all grievances and legal claims to the EAB. EAB Rule 4.A. states that "[n]o person may file an appeal with the Administrative Office until all applicable agency-level grievance procedures have been exhausted in accordance with MSPB policies, rules and regulations." In *Mississippi Department of Public Safety v. McKnight*, 623 So. 2d 249, 252 (Miss. 1993), the Mississippi Supreme Court stated "[t]his Court has repeatedly and unequivocally declared that a state civil-service employee who has been dismissed from employment must exhaust his or her administrative remedies before seeking judicial review. *Hood v. Mississippi Department of Wildlife Conservation*, 571 So.2d. 263, 268 (Miss.1990)(citing cases)." In *McKnight* the Mississippi Supreme Court held that McKnight's failure to exhaust his administrative remedies left the Harrison County Circuit Court without jurisdiction.

Since Smith et. al. failed to exhaust the agency level grievance procedure or follow EAB procedures for an appeal, the EAB does not have jurisdiction of this matter. If there is any claim or remedy available to the plaintiffs in this matter it must first be addressed at the agency level, and proper administrative procedures must be followed before the EAB can hear their claims.

For the foregoing reasons this matter is dismissed.

SO ORDERED, this the 26th day of June, 2015.


Ingrid Dave Williams
Employee Appeals Board, en banc