BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

THELMA W. BRITTIAN — APPELLANT

FILED
AUG 07 2015
EMPLOYEE APPEALS BOARD

VS. — CAUSE NO. 15-028

MISSISSIPPI DEPARTMENT OF EDUCATION — APPELLEE

ORDER OF DISMISSAL

Pursuant to the undersigned hearing officer's request, a pre-hearing telephonic conference was held on July 16, 2015, to address the Appellee, the Mississippi Department of Education's (hereafter also referred to as "MDE") Motion to Dismiss, and further discuss whether the Appellant, Thelma W. Brittian's, (hereafter also referred to as "Brittian") appeal is within the jurisdiction of the Mississippi Employee Appeals Board (hereafter also referred to as "MEAB"). Present for the hearing was Harold Brittian, representing Brittian, and Joseph Runnels, representing the MDE.

FACTS

Brittian was sent a Letter of Termination of Employment by MDE on May 12, 2015, by certified mail. On May 22, 2015, Brittian filed an Americans with Disability Grievance with MDE. On June 4, 2015, MDE responded to the Notice of Grievance and informed Brittian that there was no procedure available to her since the MDE had made its final decision. On June 19, 2015, Brittian filed an appeal with the MEAB.

OPINION

On April 15, 2014, House Bill 454 (2014 Miss. Laws ch. 491), was approved by the Governor, exempting MDE employees from the state personnel system and the rules and regulations of the Mississippi State Personnel Board (hereafter also referred to as "MSPB") for a period of two (2) years,

beginning July 1, 2014. Moreover, unless otherwise exempt, MDE employees are to be classified as non-state employees during the two (2) year period.

After hearing the arguments presented at the pre-hearing telephonic conference was held on July 16, 2015, the hearing officer finds Brittian was a non-state employee pursuant to House Bill 454 and exempt from the rules and regulations of the MSPB. The MEAB lacks jurisdiction to her Brittian's appeal.

Despite the above grounds for dismissal, the hearing officer further finds that MEAB also lacks jurisdiction to hear Brittian's appeal based on the untimely filing of her appeal. Chapter 9 (4) (B) of the Mississippi State Employee Handbook provides that employee filing an appeal to the MEAB is required to file a Notice of Appeal within fifteen (15) days after written receipt of the adverse employment decision. The Mississippi Supreme Court has held that the specified time limit for an appeal cannot be extended absent some event, not caused by a party, affecting that party's substantial rights. *Mississippi Employment Security Commission v. Powell*, 787 So. 2d 1277 (Miss. 2001). Brittian's termination notice was sent on May 12, 2015. Brittian's appeal deadline expired on Wednesday, May 27, 2015. She did not file an appeal to the MEAB until June 19, 2015.

Brittian argues she followed all the necessary procedures, including filing an ADA grievance with the MDE on May 22, 2015. However, MDE had already made its final decision and noticed Brittian of its decision to terminate her employment. Once MDE made its final decision to terminate Brittian, her only remedy was to file an appeal with the MEAB. Nothing in the record to suggest that her untimeliness was through any event or action beyond her control, nor does the filing of the ADA grievance relieve Brittian from the requirement to file an appeal to MEAB within fifteen (15) days of the termination notice . Therefore, the hearing officer finds no justification to relax or extend her appeal deadline.

After careful review, the hearing officer finds Brittian was afforded all of the notice to which she was entitled. Under House Bill 454, Brittian was a non-state employee and exempt from the rules and regulations of the MSPB. Aside from the provisions of House Bill 454 exempting her from the rules and regulations of the MSPB, Brittian's appeal was also untimely filed to the Mississippi Employee Appeals Board. It is for the above reasons, the Employee Appeals Board lacks subject matter jurisdiction to hear and Brittian's appeal is hereby dismissed, with prejudice.

SO ORDERED AND ADJUDGED, this the 5th day of August, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD

B. RAY THERRELL, II
Presiding Hearing Officer