

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

LURINE SIMELTON

**FILED**

APPELLANT

VS.

**SEP 11 2015**

DOCKET NO. 15-033

MISSISSIPPI DEPARTMENT OF MENTAL HEALTH

**EMPLOYEE APPEALS BOARD**

RESPONDENT

ORDER

Lurine Simelton was terminated from her position as an employee of the Mississippi Department of Mental Health with an effective termination date of July 23, 2015. Ms. Simelton received notice of her termination on July 23, 2015. Ms. Simelton appealed her termination to the Mississippi Employee Appeals Board. The Mississippi Department of Mental Health filed a Motion to Dismiss Simelton's appeal as untimely.

Rule 9.4(B) of the Mississippi State Employee Handbook requires an employee to file their appeal within fifteen (15) days of the employee receiving written notice of the agency's final decision. Pursuant to Rule 9.4(B), Ms. Simelton was required to file her notice of appeal of her July 23, 2015, termination no later than August 7, 2015. Ms. Simelton did not file her appeal with the Mississippi Employee Appeals Board until August 17, 2015, ten (10) days after her appeal was required to be filed. Because Ms. Simelton failed to file her appeal timely, this tribunal dismisses Ms. Simelton's appeal for lack of subject matter jurisdiction.

Ms. Simelton contends in her response to the Mississippi Department of Mental Health's Motion to Dismiss that the Mississippi Employee Appeals Board should not dismiss her appeal for the following reasons:

1. She has a meritorious appeal;
2. She did not intentionally ignore the appeal deadline but made a mistake in her

research of the time frame in which to submit her appeal; and

3. Her employing agency failed to properly advise her of the fifteen (15) day appeal deadline.

The tribunal, having considered Simelton's arguments as to why she should be allowed to file an out of time appeal finds that the arguments are not persuasive. The reason for the tribunals findings are as set out further below.

A complete copy of the Mississippi State Employee Handbook is available to any state employee on the Mississippi State Personnel Board website. Further, an addendum to the Department of Mental Health Employee Handbook, effective July 1, 2014, states that a notice of appeal to the Mississippi Employee Appeals Board must be filed "within fifteen (15) days ... [of] the date an employee receives written notice of a final agency decision."

Simelton signed a written acknowledgment on June 26, 2014, acknowledging that she was aware that the Handbook was available online at [www.mspb.ms.gov](http://www.mspb.ms.gov), and that she was responsible for reading and adhering to the personnel policies and the various rules, regulations and benefits that applied to her as a Department of Mental Health employee. Simelton also on August 12, 2014, acknowledged, in writing, that she was responsible for reading and adhering to the policies, regulations and benefits as set forth in the addendum to the Mississippi State Employee Handbook revised July 1, 2014. Based on the notice to Simelton of her appeal rights, this tribunal finds that the Mississippi Department of Mental Health properly advised Simelton of her rights in her termination letter and that Simelton failed to timely perfect her appeal to the Mississippi Employee Appeals Board because of Simelton's action/inaction and not because of any conduct of the Mississippi Department of Mental Health.

Simelton cites *Felter v. Floorserve, Inc.*, 140 So. 3d 426 (Miss. 2013) in support of her position that the Mississippi Employee Appeals Board should extend the time for her filing of the appeal because of the “unique facts.” There is nothing “unique” about this case. Simelton was provided notice in her termination letter that if she desired to appeal her termination she should “do so in the manner set out in the Mississippi State Employee Handbook.” Although she was referred to the Mississippi State Employee Handbook, Simelton did not adhere to the requirements set forth within the Handbook to perfect her appeal.

Further, a review of Felter’s facts confirm that they are substantially different than those presented in the case sub judice. In *Felter*, the Administrative Law Judge allowed an out of time appeal to a workers’ compensation claimant because Felter’s attorney moved to withdraw on the twentieth day, the deadline for Felter to appeal the Administrative Law Judge’s adverse Order. In this case, Simelton did not file, or attempt to file, any pleading with the Mississippi Employee Appeal Board, or any court, on the last day her appeal could be perfected. Simelton filed her appeal seven (7) days late. The *Felter* majority held that it would be unfair to Felter, in the specific facts in *Felter*, to deny her the right to appeal the Administrative Law Judge adverse ruling in light of the fact that the Administrative Law Judge authorized Felter to file her appeal late but within a certain time frame which Felter met. In the present case, no Mississippi Employee Appeals Board hearing officer extended the time for Simelton to file an appeal.<sup>1</sup>

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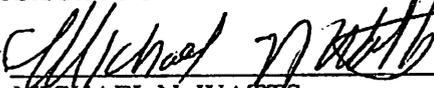
<sup>1</sup> This statement by this tribunal is not meant to suggest that an Employee Appeals Board hearing officer has the authority to extend the deadline to perfect an appeal. They do not. The statement is made solely to explain how the *Felter* facts are distinguishable from the facts in Simelton’s case.

This tribunal has also considered all the other arguments advanced by Simelton in support of her contention that an exception should be made in her case to allow her to proceed with her appeal notwithstanding it was not truly filed. These arguments are not well taken. Simelton's appeal of her July 23, 2015, termination is dismissed because the Mississippi Employee Appeals Board lacks jurisdiction .

SO ORDERED, this the 11 day of September, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY



MICHAEL N. WATTS

Chief Hearing Officer