

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

TUESDAY ABRAHAM

FILED

APPELLANT

V.

NOV 19 2015

CAUSE NO.: 15-040

MISSISSIPPI DEPARTMENT OF EDUCATION

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER

There came on for hearing on November 13, 2015, the Mississippi Department of Education's Motion to Dismiss Tuesday Abraham's appeal. The Mississippi Department of Education filed its Motion to Dismiss on October 20, 2015, alleging that Ms. Abraham had not timely perfected her appeal to the Mississippi Employee Appeals Board.

Chapter 9(4)(b) of the *Mississippi State Employee Handbook* requires that an appeal of employee must be filed "within fifteen calendar days after the date a person receives written notice of the final decision of an alleged grievable action or within fifteen calendar days of the first attempted delivery date by certified mail, return receipt requested whichever occurs first." The record reflects in this case that the first attempted delivery to Ms. Abraham of her September 18, 2015, letter of reprimand occurred on September 19, 2015. (*See*, USPS product and tracking information listed as Exhibit "B" to the Mississippi Department of Education's Motion to Dismiss). The USPS product and tracking information also shows that Ms. Abraham received the letter of reprimand on September 21, 2015. Likewise, Ms. Abraham admitted in her response to the Mississippi Department of Education's Motion to Dismiss that she received her September 18, 2015, letter of reprimand on September 21, 2015.

In response to the Mississippi Department of Education's Motion to Dismiss, Ms. Abraham contends that her appeal should not be dismissed because of good cause. Having considered the

facts and the argument of counsel for Ms. Abraham and the Mississippi Department of Education, this tribunal finds that Ms. Abraham did not have good cause to fail to perfect her appeal within the fifteen calendar days required by Chapter 9(4)(b) of the *Mississippi State Employee Handbook*. The first attempted delivery to Ms. Abraham of her September 18, 2015, letter of reprimand was September 19, 2015. Fifteen days from September 19, 2015, fell on a Sunday, October 4, 2015, which would have made Ms. Abraham's appeal required to be filed by Monday, October 5, 2015. Even if the fifteen (15) days was calculated from September 21, 2015, the date Ms. Abraham actually received the September 18, 2015, letter of reprimand, her appeal should have been filed by Tuesday, October 6, 2015.

On October 7, 2015, Ms. Abraham's counsel faxed a copy of a letter to Carey Wright, State Superintendent of Education. In that letter, Ms. Abraham's counsel indicated Ms. Abraham was appealing her September 4, 2015, grievance. That letter was dated October 7, 2015, and received by the Mississippi Employee Appeals Board on October 7, 2015. The Mississippi Employee Appeals Board considers the filing of the October 7, 2015, letter with the Mississippi Employee Appeals Board on October 7, 2015, to be the date Ms. Abraham perfected her appeal. However, Ms. Abraham's appeal should have been filed no later than October 6, 2015, and her failure to file her appeal by October 6, 2015, requires that her appeal be dismissed for lack of subject matter jurisdiction.

Accordingly, it is ordered that Tuesday Abraham's appeal from her September 18, 2015, letter of reprimand is dismissed, with prejudice.

SO ORDERED, THIS THE 18TH DAY OF NOVEMBER, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY: 
MICHAEL N. WATTS
Chief Hearing Officer