

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**FRANCES DIGGS**

**APPELLANT**

**VS.**

**FILED**

**JAN 06 2016**

**DOCKET NO.: 15-039**

**EMPLOYEE APPEALS BOARD**

**MISSISSIPPI FAIR COMMISSION**

**RESPONDENT**

**ORDER**

A hearing was held in this matter on December 9, 2015, at 9:00 a.m. at the office of the Mississippi State Personnel Board, 2nd Floor Conference Room, 210 E. Capitol Street, Jackson, Mississippi. Francis Diggs (Diggs) represented herself as a pro se litigant. The Mississippi Fair Commission (MFC) was represented by the Honorable Robert W. Graves, a Special Assistant Attorney General assigned to the Mississippi Fair Commission. The December 9th hearing lasted from approximately 9:00 a.m. until 4:00 p.m. in the afternoon. The tribunal heard from a number of witnesses called by both Diggs and MFC and a number of exhibits were entered into evidence.

**FACTS**

Frances Diggs was employed by MFC on January 26, 2015, for the position of Branch Director II for Human Resources in payroll. Diggs had worked in a similar position for the Mississippi Development Authority for eight (8) years. On March 6, 2015, Diggs received a written reprimand for a Group II, No.1 offense for insubordination for failure to timely complete

payroll in accordance with state deadlines. This written reprimand for a Group II offense was not appealed by Diggs.

On August 31, 2015, MFC issued a notice of pre-termination conference to Diggs and charged her with a second Group II, No. 1 offense for insubordination within one year and recommended her termination based on her receiving her second Group II offense within one year. A pre-termination conference was held on September 14, 2015, to consider Diggs' termination. Present at that hearing on behalf of MFC were Robert Graves, Special Assistant Attorney General for MFC, and Rick Reno, Executive Director for MFC. Diggs was present as a pro se litigant representing herself just as she did at the December 9, 2015, hearing before this tribunal.

The hearing focused on Diggs' second Group II offense for insubordination which was defined in the following manner, "Specifically, on May 11, 2015, your supervisor told you that the contracts for contract employees would expire on June 30, 2015, and that you should investigate the process to have those contracts renewed. You were not authorized to enter into any new contracts on your own. You violated those instructions in the following manner: a) you did not bring the contracts to your supervisor to review until June 29, 2015 which was the day before they had to be reported to SPAHRS, being insufficient time for your supervisor to review them; and b) you entered into written contracts on behalf of the agency with Cecelia Bratton and Kelsey Dibble without your supervisor's approval."

On May 11, 2015 by email, Director Reno had advised Diggs that the contracts for contract employees would expire on June 30, 2015, and that she should immediately undertake the process to renew these contracts. Said contracts were not brought to Director Reno until June

29, 2015, which MFC alleges was an insufficient amount of time to complete the contract process.

More importantly, MFC and Director Reno took the position that Diggs entering into two contracts with her signature atop the entity "MFC" was a Group II offense of insubordination and a violation of a specific Mississippi statute which was presented at the December 9<sup>th</sup> hearing. The statute provides that "An officer shall not enter into any contract on behalf of the state, or any county, city, town or village thereof, without being specifically authorized, thereto by law or by an order of the board of supervisors or municipal authorities." Mississippi Code Annotated 25-1-43. At the pre-termination conference, Reno said that he did not authorize Diggs to sign the contracts on behalf of MFC. It is undisputed that the aforementioned two (2) contracts were signed by Frances Diggs. It was the position of Diggs at the December 9<sup>th</sup> hearing that this was an honest mistake, and she felt that she was following the proper process in entering into the two (2) aforementioned contracts.

Diggs at both her pre-termination conference and the hearing before this tribunal raised as a defense that she was not properly trained for the position of Branch Director II for Human Resources in payroll. Diggs maintained throughout this process that she did not receive the proper amount of training once she entered into the position. MFC maintained at the hearing through testimony and argument that an employee with Diggs' experience at the Mississippi Development Authority should have been aware of the processes and duties of the new position that she had undertaken at MFC and should have been able to fulfill her duties without training.

In relation to the second Group II offense, MFC took the position that Diggs signing two (2) of the contracts was insubordination and not a mere mistake on her part. MFC's position was that had she signed all thirty (30) contracts her argument would have had more merit. However,

Diggs merely signed two (2) contracts and left the remaining twenty-eight (28) unexecuted without credible reason until June 29, 2015.

It should be noted that Diggs did not file a grievance within the agency regarding the second Group II offense within seven (7) working days as required by the rules of the Mississippi Policy & Procedures Manual. Diggs raised allegations of a hostile work environment and discrimination against MFC. Because her allegations involved Director Rick Reno of MFC, she was allowed to file an appeal directly to the Mississippi Employee Appeals Board once she received written correspondence from Deanne Mosely, Director of the Mississippi State Personnel Board allowing her to appeal directly to the Mississippi Employee Appeals Board. At the hearing, Diggs was able to develop her allegations of a hostile work environment and discrimination.

#### RULING

This cause comes down to a very basic set of facts: Diggs received two (2) Group II reprimands within a one (1) year period and was terminated by MFC. The first Group II reprimand was not grieved, nor appealed by Diggs and is not proper before this tribunal; it is *res judicata*, and facts concerning that reprimand were not considered by the hearing officer. The second Group II offense for insubordination was not grieved within the agency within the seven (7) day period as required, but was properly before this tribunal due to the fact that Diggs was afforded an appeal directly to the MEAB by the Executive Director of the Mississippi State Personnel Board.

Based on the testimony, evidence and exhibits presented at the hearing, it is the decision of this tribunal that Diggs was properly cited for the second Group II offense involving the fact

that she did not follow Director Reno's orders to prepare the contracts involving contract employees prior to June 30, 2015. Diggs not only did not have the contracts in order to Director Reno in a proper amount of time, but she also improperly executed two (2) contracts under her signature. It is the finding of this tribunal that this did constitute a second Group II offense, and Diggs therefore, was properly terminated by MFC.

Diggs' position that she was not properly trained at her pre-termination conference and the similar position that she took at the hearing of this tribunal was not completely without merit. This position was properly rebutted by a plethora of evidence by MFC that Diggs had embellished her resume' that she provided to MFC and did not have the basic job qualifications or skills for the Branch Director II position. It is unfortunate for all of the parties involved that Diggs apparently found herself in a position for which she was not qualified and was unable to properly carry out her duties. However, the matter before this tribunal is whether Diggs was properly given the second Group II offense for insubordination. Secondly, the claims of hostile work environment and discrimination are properly before this tribunal. It is the ruling of this tribunal that the second Group II offense was properly given to Diggs due to the fact that she did not properly carry out orders directly from Director Reno regarding the contracts and that she did improperly enter into two (2) of the thirty (30) contracts as MFC charged her.

The allegations of hostile work environment and discrimination were totally without merit. One such incident involved an office prank where an employee placed a bag on another employee's desk that contained an artificial snake. It should be noted that Diggs was not the intended victim of this office prank, but was in the same room where the prank was carried out. Diggs testified that once the bag was opened up and dropped to the floor that she was terrified and tried to run and mistakenly ran into a piece of furniture injuring her back. It is the ruling of

this tribunal that this was an unfortunate office prank that was a form of horse play. However, Diggs supervisor, Director Reno had no knowledge of this prank and it was carried out without his knowledge. Director Reno took action following this office prank to meet with the employee who carried out the office prank and indicated that it should not happen again at MFC. It is the ruling of this tribunal that the office prank concerning an artificial snake did not amount to a hostile work environment and was never intended to intimidate Diggs in any way.

Next, Diggs at some point posted a notice that Confederate Memorial Day was a State Holiday advising employees that they could possibly be off on that particular Mississippi State Holiday. Director Reno apparently became angry about this notice being posted and was short with Diggs or at worst, yelled at Diggs concerning the posting of this notice without his authorization. It is the ruling of this tribunal that regardless of whether or not Director Reno raised his voice at Diggs or became upset, that all of Director Reno's actions were merely the nature of the work place and are common for the interaction between supervisors and employees. In other words, just because someone's boss gets upset and yells at an employee, this does not amount to a hostile work environment. Clearly this is the type of activity that occurs in many work places in both the private and public sector. In order to amount to a hostile work environment, Diggs would have to prove much more than the fact that Director Reno became upset and perhaps raised his voice at her. This did not amount to a hostile work environment.

Neither the incident involving the artificial snake nor the incident involving the Confederate Memorial Day amounted to any form of discrimination or a hostile work environment. Although Diggs did properly find herself before the MEAB due to the fact that she had raised these allegations, this tribunal finds they were without merit and these claims are therefore dismissed.

Based on the testimony, evidence and exhibits entered into the record at the hearing, it is the ruling of this tribunal that Diggs' appeal is dismissed with prejudice; the second Group II offense and her termination are affirmed. Her allegations of a hostile work environment and discrimination are dismissed with prejudice.

So ORDERED, on this the 6<sup>th</sup> day of January, 2016.

MISSISSIPPI EMPLOYEE APPEALS BOARD

A handwritten signature in cursive script, appearing to read "Grant M. Fox", is written over a horizontal line.

Grant M. Fox, Hearing Officer