

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

FRANCES DIGGS

FILED

APPELLANT

VS.

MAR 09 2016

DOCKET NO. 15-039

MISSISSIPPI FAIR COMMISSION

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER AFFIRMING IN PART, AND REVERSING IN PART
THE ORDER OF JANUARY 6, 2016

Frances Diggs (“Ms. Diggs”) appealed to the Full Employee Appeals Board the January 6, 2016, Order of Hearing Officer Grant Fox affirming Ms. Diggs’ termination. The Mississippi Employee Appeals Board, *en banc*, having considered the record, the brief of the Mississippi Fair Commission (“MFC”) and the brief of Ms. Diggs, affirms in part, and reverses in part, Hearing Officer Fox’s January 6, 2016, Order. The reasons for this tribunal’s opinion follow.

Ms. Diggs initially filed an appeal with the Mississippi Employee Appeals Board alleging that her termination of September 18, 2015, was improper. Ms. Diggs’ bases for her position that her termination was improper are (1) that she had not been properly trained for the position of Branch Director II for Human Resources and Payroll and (2) that she was the recipient of a hostile work environment and discrimination.

Ms. Diggs contends she was the recipient of a hostile work environment and of discrimination because of two incidents which occurred while employed at the MFC. One incident involved a white employee placing an artificial snake on the desk of another white employee. Hearing Officer Fox found, and the record supports, that the prank involving the artificial snake was not directed at Ms. Diggs. While Ms. Diggs was in the same room where the prank occurred, the prank involved one employee putting the artificial snake on an employee’s desk other than Ms. Diggs’ desk. Hearing Officer Fox, in evaluating the facts, found that the prank was not directed at

Ms. Diggs. The findings of fact of the hearing officer will be affirmed if there is sufficient evidence to support his or her findings. *See, Cox v. Mississippi Department of Corrections*, 969 So. 2d 900 (Miss. App. 2007). There are sufficient facts in the record to support Hearing Officer Fox's factual determination that the prank was not directed at Ms. Diggs, and therefore, that ruling is affirmed.

At some point Ms. Diggs posted a Confederate Memorial Day notification to her file cabinet. Director Reno, Ms. Diggs' supervisor, in a "firm voice" directed Ms. Diggs to take down the Confederate Memorial Day holiday notice because there were events being conducted on the state fairgrounds almost daily and some Fair Commission employees would need to work on holidays. Hearing Officer Fox found that Ms. Diggs was not subjected to a hostile work environment and that Director Reno's actions by themselves did not create a hostile work environment. Because there are sufficient facts to support Hearing Officer Fox's factual determination that Ms. Diggs was not subjected to a hostile work environment, this tribunal may not disturb that factual finding. *Ibid.*

Having addressed Ms. Diggs' alleged hostile work environment claim and the discrimination claim, the only remaining issue is whether Ms. Diggs committed the two Group Two offenses within a one year period as alleged in her termination notice. The evidence adduced at the evidentiary hearing is as follows.

On August 31, 2015, MFC issued a notice of pre-termination conference to Ms. Diggs and charged her with a second Group Two, No. 1 offense for insubordination within one year and recommended her termination based on her receiving her second Group Two offense within one year. Following a pre-termination conference, MFC terminated Ms. Diggs. Ms. Diggs timely appealed her termination to the Mississippi Employee Appeals Board. An evidentiary hearing was held on Ms. Diggs' appeal on December 9, 2015.

Ms. Diggs' alleged second Group Two offense for insubordination was based on the following, "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 Ms. 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. The 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. The perceived failure in forwarding the contracts for review before June 29, 2015, was one of the bases utilized by MFC to support the second Group Two reprimand of insubordination. The Mississippi Employee Appeals Board, *en banc*, notes that Director Reno did not direct that Ms. Diggs return the contracts to him by a specific date. Ms. Diggs was only to return the contracts to Director Reno in a sufficient time to complete the renewing of the contracts. Director Reno, so far as the record reflects, did not follow up with Ms. Diggs after May 11, 2015 – at least not until late June, 2015 – to return the contracts to him. This fact, coupled with Director Reno not providing Ms. Diggs a specific day she was to return the contracts to him, does not support the insubordination allegation against Ms. Diggs. The Mississippi Employee Appeals Board, *en banc*, finds that Ms. Diggs met

her burden of proof that, because she was not given a specific date by which she was to return the contracts to Director Reno and because Director Reno did not follow up with Ms. Diggs until a few days before the contracts expired, that Ms. Diggs was not insubordinate in not returning the contracts to Director Reno prior to June 29, 2015.

MFC also alleged that Ms. Diggs, entering into two contracts with her signature atop the entity "MFC," was a Group Two offense of insubordination and a violation of a specific Mississippi statute which was presented at the December 9, 2015, hearing. Miss. Code Ann. § 25-1-43 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." Miss. Code Ann. § 25-1-43. At the pre-termination conference, Director Reno said that he did not authorize Ms. Diggs to sign the contracts on behalf of MFC. Ms. Diggs admitted she signed two contracts. She contends though that her signing the contracts was an honest mistake. While that may be true, her signing the contracts violated Miss. Code Ann. § 25-1-43. Whether her signing them was a mistake or intentional is irrelevant. All state employees are required to adhere to state law in fulfilling their job responsibilities. Here, Ms. Diggs' action in signing the two contracts was contrary to Mississippi statutory law and constituted insubordination within the meaning of *The Mississippi State Personnel Board Policy and Procedures Manual*.

Having determined that Ms. Diggs' termination was not the result of discrimination, that she did not work in a hostile work environment, that she was not insubordinate in failing to deliver the contracts to her supervisor for review until June 29, 2015, and that her signing the two contracts contrary to Miss. Code Ann. § 25-1-43 was insubordination, the only remaining issue is whether Ms.

Diggs committed two Group Two offenses within one year. The record confirms that she did.

Ms. Diggs received a Group Two written reprimand on March 6, 2015, for insubordination. Ms. Diggs did not appeal the receipt of the March 6, 2015, written reprimand to the Mississippi Employee Appeals Board and it became final. Ms. Diggs' signing of the two contracts in violation of Miss. Code Ann. § 25-1-43, constituted her second Group Two offense of insubordination. The accumulation of the two Group Two offenses within the time period of March 16, 2015, and September 18, 2015, was within the one (1) year time period set forth in Section 9.1(B) of *The Mississippi State Personnel Board Policy and Procedures Manual*. Accordingly, the MFC's termination of Ms. Diggs is affirmed.

Ms. Diggs' appeal is dismissed, with prejudice.

SO ORDERED, THIS THE 8 DAY OF MARCH, 2016.

MISSISSIPPI EMPLOYEE APPEALS BOARD
en banc

By: Michael N. Watts
MICHAEL N. WATTS
Chief Hearing Officer