

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

DOROTHY McCLUNG

**FILED**

APPELLANT

V.

APR 29 2016

DOCKET NO. 16-011

MISSISSIPPI DEPARTMENT OF  
REHABILITATION SERVICES

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER OF DISMISSAL

Presently before the Mississippi Employee Appeals Board is the appeal by Dorothy McClung (hereafter "Ms. McClung") from her five (5) day suspension, without pay. The written suspension letter is dated March 8, 2016 and was hand-delivered to Ms. McClung on March 8, 2016. Having considered all documents in the record and following oral argument, the Mississippi Employee Appeals Board dismisses Ms. McClung's appeal for lack of subject matter jurisdiction. The reasons for the dismissal are set forth below.

Ms. McClung was suspended for five (5) working days by letter dated March 8, 2016. The March 8, 2016, suspension letter was hand-delivered to Ms. McClung on March 8, 2016. Ms. McClung's Notice of Appeal of the March 8, 2016, suspension was not filed with the Mississippi Employee Appeals Board until March 25, 2016.

The Administrative Rules of the Mississippi Employee Appeals Board are clear. All employees who wish to appeal an adverse employment decision must do so within fifteen (15) days of their receipt of written notification of the adverse employment decision. Specifically, the *Mississippi State Personnel Board Policy and Procedure Manual* states as follows:

Rule 10.7.5 Perfection of Appeal by Timely Filing

A. . . . .

B. A Notice of Appeal must be filed within fifteen days after the date a person receives written notice of the final decision of

an alleged grievable action or within fifteen days of the first attempted delivery date by certified mail, return receipt requested, whichever occurs first.

Further, Rule 10.7.7 of the *Mississippi State Personnel Board Policy and Procedure Manual* provides “When an appeal is filed, a presiding hearing officer shall determine whether or not he or she has jurisdiction. If not, the appeal shall be dismissed.”

To properly perfect an appeal of her suspension, Ms. McClung was required to file her appeal by March 23, 2016, which is fifteen (15) days from Ms. McClung’s March 8, 2016, receipt of the suspension notice. Ms. McClung’s appeal was not filed with the Mississippi Employee Appeals Board until March 25, 2016. Ms. McClung argues that notwithstanding her appeal being filed late, she had “good cause” for the late filing. In explaining “good cause” the Mississippi Supreme Court has stated:

To establish ‘good cause’ the plaintiff must demonstrate at least as much as would be required to show excusable neglect, ‘as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice. *Webster*, 834 So.2d at 28 (citations omitted). Moreover, to demonstrate “good cause,” the plaintiff must show that a diligent effort was made to serve the defendant in a timely manner. *Foss v. Williams*, 993 So.2d 378, 379 (Miss. 2008). The plaintiff must show more than that service failed due to “simple inadvertence or mistake of counsel or ignorance of the rules.” *Watters*, 675 So.2d at 1243.

Ms. McClung admitted that the reason her appeal was not timely filed was because she misinterpreted the fifteen day time frame of Rule 10.7.5 of the *Mississippi State Personnel Board Policy and Procedure Manual* to mean working days and not calendar days. Ms. McClung’s stated reason for her filing her appeal untimely is insufficient to establish “good cause” as defined by the Mississippi Supreme Court. *See, Watters*, 675 So.2d 1242 (Miss. 1996).

Because Ms. McClung did not file her appeal with the Mississippi Employee Appeals Board within the fifteen days required by Rule 10.7.5 of the *Mississippi State Personnel Board Policy and Procedure Manual*, her appeal is untimely and the Mississippi Employee Appeals Board lacks subject matter jurisdiction. The Mississippi Department of Rehabilitation Services' Motion to Dismiss is granted. Dorothy McClung's appeal is DISMISSED, with prejudice.

SO ORDERED, THIS THE 28 DAY OF APRIL, 2016.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:



MICHAEL N. WATTS

Chief Hearing Officer