

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

MARY LEAHMAN

FILED

APPELLANT

VS.

SEP 07 2016

DOCKET NO. 16-008

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES RESPONDENT

ORDER

This cause came on for hearing on August 8, 2016 in Jackson, Mississippi. The appellant Mary Leahman (Leahman) appeared pro se, and Ahmad Smith represented the Mississippi Department of Human Services (MDHS).

SUMMARY

Mary Leahman was employed as an Area Social Worker Supervisor in the Leflore County DHS- Family and Children's Services. She suffers avascular necrosis of the right and left hips. After exhausting her personal leave and FMLA leave, she sought to obtain donated leave. This leave was to allow her to have surgery for her condition. The request for leave was denied. On March 9, 2016, Leahman filed a Notice of Appeal of this denial. Leahman resigned her position effective June 1, 2016 and is now on disability retirement.

FINDINGS

Leahman submitted her request for donated leave to Judy Davis, Regional Director. This request was denied. Leahman supplemented her information and submitted a second request by providing a medical opinion that her condition was a catastrophic illness. The Mississippi State Employee Handbook, in the section designated for "Donated Leave for Catastrophic Injury or Illness," provides in part, that a catastrophic injury or illness "means a life-threatening injury or illness of an

employee.” The rule also describes chronic illnesses or injuries, “such as cancer or major surgery, which result in intermittent absences from work and which are long-term in nature and require long recuperation periods.” MDHS testified that there is no further elaboration of what should be considered a catastrophic injury or illness. In 2004, Donald R. Taylor, Executive Director of MDHS published Memorandum 7446 entitled “Notice to all Employees-Donation of Leave Procedures.” In this memo, Taylor details:

The legislation defines “catastrophic injury or illness” as a life-threatening injury or illness of an employee or member of an employee’s immediate family which totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation from the state for the employee....

An employee seeking approval for receipt of donated leave must provide a physician’s statement which addresses all of the following information, as required in the law:

- 1) beginning date of the catastrophic injury or illness,
- 2) description of the injury or illness,
- 3) prognosis for recovery, and
- 4) anticipated date that the employee will be able to return to work.

Statements which do not address all information will not be acceptable. Further, if the injury or illness is not catastrophic and life-threatening, it will not be approved. It is suggested that the employee take a copy of the above list to the physician so that there will be no confusion about the required information.

In support of her request for donated leave, Leahman relies upon a work/school excuse signed by her physician Valencia P. Martin, M.D., dated February 8, 2016 which provides in the comment section:

“Catastrophic illness- avascular necrosis of right hip and left hip. Surgery on right hip was 10/30/2015 in rehabilitation at this time. Will also need surgery on left hip pending healing on right.”

Leahman admits that Dr. Martin was not provided the above definition of “catastrophic injury or illness” when she wrote the excuse. Leahman offered no testimony or exhibit demonstrating that her diagnosis of avascular necrosis is life threatening. Effective June 1, 2016, Leahman resigned her position with the MDHS and is now on disability retirement.

OPINION

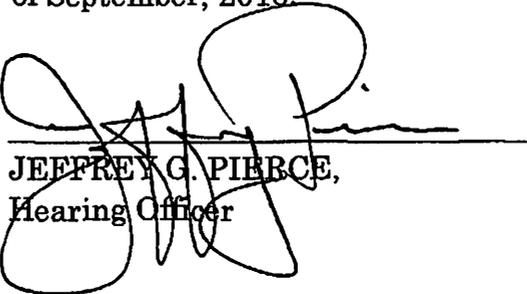
The tribunal finds the defined requirements for donated leave to be clear and unambiguous. The record is void on any evidence that Leahman is suffering from a catastrophic, life threatening injury or illness.

Leahman has the burden of proof in this matter. See, Mississippi State Personnel Board Policy and Procedures Manual, effective date 7/1/2015, Chapter 10, Section 20.B. Also, see *Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999). In *Richmond*, the court stated: The statute and administrative regulations clearly place the burden of persuasion on the aggrieved employee to demonstrate that the reasons given are not true. Rule 17, Administrative Rules of the Mississippi Employee Appeals Board; Miss. Code Ann. § 25-9-127 (1972). ... This is not mere semantics. Under our scheme, in a nutshell, ties go to the appointing authority. Unless the employee carries the burden of persuasion, the employee has no right to have the employment decision overturned. *Mississippi Employment Security Commission v. Collins*, 629 So. 2d 576, 580 (Miss.

1993); Miss. Code Ann. § 25-9-127. Having considered all of the testimony of the witnesses in this case, having considered all the exhibits introduced into evidence, having evaluated the credibility of all witnesses, and after having drawn certain inferences from the testimony of witnesses and the exhibits introduced into evidence, this tribunal finds as a fact that Leahman did not meet her burden of proof to show that she suffers from a catastrophic, life-threatening condition and was denied donated leave on that basis.

Lastly given her resignation on June 1, 2016, procedurally, Leahman has extinguished her standing to assert a claim for donated leave. MSPB Policy and Procedures Manual 7.3.4 M. provides that “[d]onated leave may not be used in lieu of disability retirement.” Since Leahman is now receiving disability retirement, she is seeking donated leave in lieu of disability retirement. This form of relief runs afoul of the mandates of the Policy and Procedures Manual. While this reason is sufficient enough to dismiss this matter with prejudice, this tribunal further finds the above stated substantive grounds as an additional justification for dismissal, as well. For these reasons, Leahman’s appeal is dismissed with prejudice.

SO ORDERED, this the 6th day of September, 2016.



JEFFREY G. PIERCE,
Hearing Officer