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BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

KANDY MORAN

FILED

APPELLANT

VS.

AUG 17 2016

DOCKET NO. 15-008

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER

This cause came on for hearing on June 8, 2016 in Biloxi, Mississippi. The appellant Kandy Moran (Moran) appeared by and through counsel, Mike Farrell and Tonya Blair represented the Mississippi Department of Human Services (MDHS).

SUMMARY

Kandy Moran was employed as an Eligibility Worker II (EW). Her job was to interview applicants for food stamps and other benefits and document whether they were eligible. Prior to 2009, an EW manually wrote down the applicant's information on a 23 page form. In 2009, DHS went paperless and required eligibility workers to input the applicant's information into the computer system as they were interviewing the applicant. The policy *known as the interactive interview process* requires the EW to input the information into the computer system during the interview and not at a later time. The exception to this rule is if the computer system is down for some reason, the EW then manually records information on a Form 900A and then inputs information into the computer system when it is back up.

On or about February 3, 2015, Moran received notice of a recommendation for her termination of employment with MDHS based upon an accumulation of

multiple Group III and II offenses, and one (1) Group 1 offense within a period of one (1) year. In summary, MDHS claimed that Moran violated this *interactive interview process* policy in four instances by inputting information *after* the interview and was therefore insubordinate and falsified the records. This tribunal affirms the decision of MDHS for the reasons set forth below.

FINDINGS

The MS State Personnel Board Policy and Procedures Manual sets out the Discipline and Corrective Action in Chapter 9 A, B, and C on page 2 and 3 of the Manual. The policy covers Group One, Two and Three Offenses. The Insubordination Offense is set out in Group Two (1.) and the Falsification of Records cover Group Three (6.).

The manual states that 2 Group Two Offenses may result in a demotion or dismissal. In this case, Moran committed four (4) Group Two Offenses. This tribunal finds that Moran did not falsify records, it does, however, find that she failed to follow the prescribed procedure for entry of information. This tribunal finds that termination for insubordination is justified. Since the Appellant failed to perform assigned work, or failed to comply with applicable established written policy as proscribe in the Group Two Offense 1, this discipline is valid. Based on the evidence, the four acts committed by Moran involving [REDACTED] [REDACTED] were considered insubordinate acts.

[REDACTED] In this case, the client's application showed rent of \$325 per month. That number was lined through and a new number of \$140 was written in.

One handwritten change on the form was initialed by the client. The change in the rent was not. Moran denied that she made any change. DHS assumed that Moran made the change. Client denies that she made the change. The lower amount meant that the client was not eligible for expedited processing.

██████████ In this case, Moran called the client for her interview. Unbeknownst to Moran, the client was waiting in the DHS lobby for a face-to-face interview. Moran proceeded to conduct an interview over the phone. While that interview was out of the norm, there was no policy violation for that. However, the agency stated that Moran entered some of data into the computer system after the interview and thus committed a violation of the interactive interview policy.

██████████ In this case, DHS claimed that Moran entered some information after the fact.

██████████ DHS alleged that some information was input after the interview. In addition, DHS said that Moran should not have denied the benefits on grounds that she had quit her job. DHS said that 60 days after quitting a job, an client becomes eligible for benefits. Management completed the process and granted benefits. That confusion about eligibility did not involve falsification or insubordination.

OPINION

The Appellant's asserting that the allegations pertaining to her falsifying records is ambiguous. This tribunal agrees. The tribunal finds implausible an unwritten practice requiring EW to input information contemporaneous with an interview and it is incomprehensible to consider input *after* the interview as falsifying records, regardless of the truth of the information entered. Just because the interviewer enters information after the fact, does not make that information false. Despite this, Moran still acted insubordinately by not following a procedure which was well known to her.

MDHS contends four (4) separate incidents constitute "insubordination" or the "failure or refusal to follow supervisor's instruction, perform assigned work, or

otherwise comply with applicable established written policy." This tribunal finds that MDHS is correct in that at least two of the incidents constitute insubordination.

Gloria Johnson, the state Personnel Director for DHS, testified that a delay in entering records would *not* be falsification of a record, but it could be insubordination.

Insubordination. Section 9.10(B) of the Mississippi Policy and Procedures Manual defines "insubordination" as follows:

Insubordination, including, but not limited to, resisting management directives through actions and/or verbal exchange, and/or failure or refusal to follow supervisor's instructions, perform assigned work, or otherwise comply with applicable established written policy.

The Mississippi Supreme Court has directed the EAB should follow this definition. *Mississippi Forestry Commission v. Oglesby*, 105 So.3d 375 (Miss. 2013); *Young v. Miss. State Tax Commission*, 635 So. 2d 869 (Miss. 1994).

The issue is whether the failure to follow the interactive interview process in every instance rises to the level of insubordination. Moran argues that she had no intention to not follow the process and that should exculpate her. It does not. While intent is a component of the insubordinate offense, the offense also includes lesser acts or omissions, that is, a failure to do or refrain from doing something. Moran knew the policy. She knew compliance was expected. She did not comply.

Moran's supervisor, Billea Phillips, testified that following the policy was

a daily challenge for EWs. The tribunal does not dispute that fact. And Phillips testified that she could not remember Mrs. Johnson reporting to her that Moran had not followed the interactive interview policy on multiple cases. However, simply because she does not remember, this does not meet Moran's burden of proof to contest that she knew of the policy and failed to comply with it on more than one occasion. She was insubordinate. This cannot be refuted.

Moran 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. That is, unless the employee carries the burden of persuasion that the alleged conduct did not occur, 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 Moran did not meet her burden of proof to show that she was not insubordinate. The Appellant failed to provide evidence meeting her burden of proof to demonstrate that she was not insubordinate in failing to comply with the interactive interview policy with respect to [REDACTED]. And while this tribunal fails to understand why discipline was necessary with respect to [REDACTED], the exercise must end here. Regardless, the two insubordinate offenses related to [REDACTED] are sufficient to justify the disciplinary measures administered. The evidence demonstrates that Moran was insubordinate as contended by MDHS.

SO ORDERED, this the 17th day of August, 2016.


JEFFREY G. PIERCE,
Hearing Officer