

FILED
MAY 11 2012

EMPLOYEE APPEALS BOARD

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

ELLA GREEN

APPELLANT

VS.

CAUSE NO: 12-006

**MISSISSIPPI DEPARTMENT
OF HUMAN SERVICES**

RESPONDENT

ORDER OF HEARING OFFICER

THIS CAUSE HAVING COME on to be heard on April 4, 2012 in Jackson, Mississippi on Appeal by Ella Green (“Green”). Ms. Green was unrepresented and the Mississippi Department of Human Services (“MDHS”) was represented by the Honorable William Rosamond. Ms. Loraine Eden, Program Administrator Sr., was the Agency Representative. Green appeals the decision of MDHS for three offenses: Group I for tardiness; Group III for breach of confidentiality; and Group III for workplace harassment. Based upon the testimony, the evidence presented, including documents, this Hearing Officer does Affirm in Part and Reverse in Part the decision of the MDHS.

FINDINGS OF FACT

Green was initially employed by MDHS on April 3, 1978 as an eligibility worker. She resigned in 1989 to attend school and was rehired in 1990 as a Program Specialist and subsequently promoted to Program Administrator and has worked in several departments at MDHS. Since July, 2011, she has worked at the switchboard in the Economic Assistance (“EA”) Customer Service Department, the position she currently employs. Her duties are to answer calls from clients and refer them to the proper County in Mississippi to assist with their inquiry. Green receives daily assignments by email or facsimile by from her supervisors.

On November 18, 2011, Green sent an email to another employee of MDHS and copied an employee of the Missouri Department of Human Services which contained confidential information on a client in George County, Mississippi: the clients name, case number and benefits; as well as Green’s personal comments about another MDHS employee.

Green’s daily work schedule is 8:30 am to 5:30 pm. On four separate occasions, August 31, 2011, November 2, 2011, November 21, 2011 and November 28, 2011 Green was late for work. Tardies at MDHS are either excused or unexcused and employees are required to call if

they are to be late. Green has a history of being tardy at MDHS however, most were removed or excused for good cause. The November 21, 2011, tardy was excused, the other three unexcused.

Green currently has two direct supervisors, Cathy Norwood and Sherry Jackson. Sherry Jackson has supervised Green prior to July, 2011, and the two have a history of conflict. Jackson signed the disciplinary notice for tardiness. Green has appealed alledging inter alia, harassment by Jackson.

ORDER

Green has the burden of proving that the reasons stated in the notice of the MDHS final disciplinary decision are not true or not sufficient grounds for the action taken. MSPB Policy and Procedures Manuel XX. A. (10-01-10). If MDHS has acted in accordance with the rules of the MSPB and its actions are allowed, the EAB is without authority to alter the Agency's decision. MSPB Policy and Procedures Manuel XXIV. B. (10-01-10). Green has failed to meet her burden in this case.

Green asserts that copying the Missouri Official on the November 18, 2011, email was a "mistake" or unintentional. The Assistance Titles of the Social Security Act require MDHS to provide safeguards which restrict the disclosure of information concerning applicants and recipients of Social Services. Information regarding food stamp cases may only be released by written request. MDHS has adopted a Code of Ethics for Employees of MDHS, which is one of the ways the agency adheres to the Federal Act. The Code of Ethics requires employees to maintain the integrity of private information and not reveal case information to anyone not having proper professional use for such. MDHS Administrative Policy AP-27 (10-19-09) pg. 2. Neither the Social Security Act nor the MDHS Code of Ethics makes a distinction between an intentional or unintentional release of confidential information. Green has been employed in numerous positions at MDHS since 1978. As a seasoned MDHS employee, she should be well aware of the need to protect private information and has read the Code of Ethics. Therefore, Green's argument that the email was a "mistake" is without merit.

In addition to the private client information, the November 18, 2011, email also made references to Green's adverse opinions of another MDHS employee. The MDHS - Administrative Policy AP-27 also requires MDHS employees to conduct their relationship with other MDHS employees in a manner as to "promote mutual respect within the profession." Her actions are a direct violation of this policy.

Unexcused tardiness is a basis for a Group I disciplinary offense. MSPB Handbook Chapter 7, I. A. 1. (10-01-10). Green was tardy four times in the fall of 2011, August 31, November 2, November 21 and November 28. Once of these was found to be excused, November 21, 2011. The other three were considered unexcused. Green provided no evidence to show that the other three tardies were excusable. Green stated that she simply signed in at the wrong time on August 31, 2011 and had to take a family member to the airport on November 2, 2011. She failed to call in and report either incident and did not take any leave time, which she was entitled to do, to avoid being tardy. Further, on November 28, 2011, Green stated she was late because she had to take something to her daughter at school. Again, she did not call in and her supervisor did not find this to be a good cause for being late. The record is replete with other instances of Green being tardy. Her supervisors were lenient because of her family situation and because she had been an employee since 1978. Based upon the evidence presented Green was properly charged with the Group I offense for unexcused tardiness.

Finally, Green alleges harassment by her supervisor Sherry Jackson. Green has two direct supervisors, Jackson and Cathy Norwood. Another MDHS employee, Robin Smith, is the direct supervisor of both Jackson and Norwood. Green is issued assignments by all three. Prior to the hearing herein the parties resolved the harassment charge and agreed that only Norwood will assign tasks to Green and oversee her work. The remaining issue is whether Sherry Jackson is entitled to supervise Green in the absence of Cathy Norwood. Due to the history of conflict between Jackson and Green, some oversight of this supervisory relationship is indicated. In the absence of Cathy Norwood, any assignments given to Green by Jackson are to be copied to Cathy Norwood and Robin Smith for oversight.

Based upon the foregoing, the actions of the MDHS in the discipline of Green are hereby **AFFIRMED** as to the Group III Offense of Breach of Confidentiality and the Group I Offense of unexcused tardiness and the Appeal of Green on these issues is hereby **DISMISSED, WITH PREJUDICE**. The Appeal of Green for Harassment is hereby **AFFIRMED IN PART AND REVERSED, WITH PREJUDICE, IN PART**.

SO ORDERED THIS THE 8th DAY OF May, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD



**WESLA SULLIVAN LEECH
HEARING OFFICER**