

FILED
AUG 13 2012

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

SHARON MARTIN

APPELLANT

VS.

DOCKET NO. 12-010

MISSISSIPPI DIVISION OF MEDICAID

RESPONDENT

ORDER

A hearing was held on Sharon Martin's appeal on the 25th day of June, 2012. Sharon Martin (hereinafter "Martin" or "Appellant") was represented by Jason D. Herring. The Mississippi Division of Medicaid (hereinafter "MDOM") was represented by Charles Quarterman.

FINDINGS OF FACT

1. At all material times, Martin was an employee of the Mississippi Department of Medicaid.

2. Martin submitted an Application for Employment for the [REDACTED] [REDACTED] on March 6, 2002. (See Exhibit 1 to appeal hearing).

3. Martin, on her [REDACTED], Application for [REDACTED] [REDACTED] [REDACTED]. (See Exhibit 1 to appeal hearing.) Subsequent to Martin applying for employment with the Mississippi Department of Medicaid, she was hired as a Medicaid Specialist I in 2002.

4. On July 25, 2011, Martin submitted an Application requesting [REDACTED] [REDACTED]. (See Exhibit 2 to

This order has been partially redacted of information exempted pursuant to the Mississippi Public Records Act, other statutory exemptions or court order.

appeal hearing.) Martin submitted the [REDACTED], Application online and in PDF version. Martin signed the [REDACTED], Application.

5. On July 25, 2011, Martin submitted to the Mississippi State Personnel Board a request that the Mississippi State Personnel Board "substitute my eight years of experience and performance as a Medicaid Specialist II for lack of an associate's degree that is required for the Medicaid Specialist III position for which I am applying." (See Exhibit 3 to appeal hearing).

6. The Medicaid Specialist III position paid a higher salary than the Medicaid Specialist II position.

7. On Martin's [REDACTED], State of Mississippi Application (Exhibit 2) Martin stated that [REDACTED]

[REDACTED]. (See Exhibit 2 to appeal hearing.)

8. At some point after Martin submitted her [REDACTED], Application, MDOM requested Martin provide it a transcript from [REDACTED]. Martin failed to provide MDOM an academic transcript.

9. After Martin did not provide MDOM a transcript, the MDOM contacted [REDACTED] and requested a transcript direct from [REDACTED].

10. [REDACTED] forwarded the MDOM a Transcript of Academic Record of Martin. The Transcript of Academic Record was issued on December 5, 2011. The Transcript of Academic Record confirmed that Martin matriculated with [REDACTED]. (See Exhibit 5 to appeal hearing.)

11. Martin's Transcript of Academic Record from [REDACTED] reflected that as of the date of its issue on December 5, 2011, that Martin [REDACTED]. (See

Exhibit 5 to appeal hearing.)

12. Martin was terminated from her employment with the MDOM with an effective date of February 17, 2012. Martin's termination letter provided that she was terminated because she committed:

. . . two (2) Group III, No. 4 Offenses as referenced in the Mississippi State Employee Handbook. The Group III Offense is under Sub-Section 4- "falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official State documents." Therefore, your employment with the Division of Medicaid will be terminated at the close of business Friday, February 17, 2012.

Specifically- On March 6, 2002, you submitted a State of Mississippi Application (green form) to the Mississippi State Personnel Board (MSPB) for a [REDACTED].

On July 25, 2011, you submitted a second State of Mississippi Application to the agency for a [REDACTED].

13. Prior to Martin's termination from the MDOM, she was provided her pre-termination conference on December 28, 2011.

14. Prior to her termination, Martin was provided sufficient opportunity to provide MDOM a transcript from [REDACTED] or other documents from [REDACTED].

15. Falsification of records, such as, but not limited to vouchers, reports, time records, leave records, employment application or other official state documents is a Group III Offense, No. 4 as outlined in the *Mississippi State Employee Handbook*.

16. Martin's statement on her Application of [REDACTED] [REDACTED] was a falsification of record of an employment application

within the meaning of the *Mississippi State Employee Handbook* (March, 2010) and was a Group III Offense, No. 4.

17. Martin's statement on her Application of [REDACTED] [REDACTED] was a falsification of record of an employment application within the meaning of the *Mississippi State Employee Handbook* (March, 2010) and was a Group III Offense, No. 4.

18. Martin's statement on her [REDACTED] Application [REDACTED] [REDACTED] was not the result of her computer malfunction.

19. Martin failed to meet her burden of proof that the facts upon which the MDOM based her termination were untrue.

20. From the date her appeal was filed February 29, 2012, until the day of her appeal hearing, Martin did not request the EAB issue a Subpoena for an [REDACTED] representative to appear at the appeal hearing, nor that the EAB issue a Subpoena Duces Tecum to [REDACTED] directing [REDACTED] to produce all records it had pertaining to Martin.

CONCLUSIONS OF LAW

Martin, as the Appellant, has the burden of proof on her appeal. *See, Mississippi State Personnel Board Policy and Procedure Manual 10.7.21(c)*. To prevail on her appeal, Martin must prove that either (1) the allegations upon which her termination were based are not true or (2) if true, those facts were not sufficient grounds for the action taken against Martin by the MDOM. *Id.*

Having considered all of the exhibits introduced into evidence, having evaluated the credibility of the only two witnesses to testify, to-wit, Nichole Litton and Sharon A. Martin I find as a fact that Martin failed to meet her burden of proof that the facts upon which the

MDOM based her termination are untrue or that those facts were not sufficient grounds for the MDOM's termination of Martin. Accordingly, Martin's termination is AFFIRMED. The reasons for my decision follow.

Martin, at the appeal hearing, did not deny that she represented on her [REDACTED], employment application that [REDACTED] application. To the contrary, she insisted throughout the appeal hearing that after questions arose in 2011 concerning whether she had completed [REDACTED] that she had requested a copy of her [REDACTED] transcript from [REDACTED]. She testified that she had requested that Dr. Cole and an [REDACTED] administrator provide a letter confirming that she had [REDACTED].

Martin's position at her appeal hearing was that the December 5, 2011, transcript [REDACTED] sent the MDOM was in error. Martin contended that somewhere in [REDACTED] official records was proof that Martin had in fact attended [REDACTED] and had, in fact, [REDACTED] Martin represented on her [REDACTED] application. Martin, however, did not provide any credible proof at her appeal hearing to substantiate her position. While Martin testified at her appeal hearing that "she knew she had [REDACTED] and that "her mother talked to Dr. Cole [representative of [REDACTED]] and that she had talked to Dr. Cole's assistant and was told that the [REDACTED] were on microfiche," other than Martin's testimony to these facts, Martin introduced no evidence in support of these contentions.

Although Martin had approximately four (4) months from the date of the filing of her appeal notice and date of hearing, Martin did not subpoena Dr. Cole or any other [REDACTED] representative to testify at the appeal hearing to substantiate that she [REDACTED]. Nor did Martin request the EAB issue subpoena

duces tecum to [REDACTED] to obtain documents to support her position. In short, Martin introduced no evidence to refute the official [REDACTED] transcript introduced into evidence reflecting that she had obtained [REDACTED]. Thus, the only objective evidence in the record is that Martin did not [REDACTED]. Given the length of time Martin was provided to produce documentation of her [REDACTED], her failure to do so and her failure to subpoena any [REDACTED] representative to support her position, I find that Martin failed to meet her burden of proof that she did not, as MDOM alleged, falsify her [REDACTED], MDOM employment Application. Further, I find that the falsification of her [REDACTED] Application was sufficient grounds for the MDOM to terminate her employment.

The commission of one Group III Offense, standing alone, is a sufficient basis to affirm Martin's termination. However, in terminating Martin, MDOM also alleged that Martin falsified an official state document when she sought [REDACTED] from her [REDACTED]. Martin, at the appeal hearing, did not deny that she stated on her [REDACTED], Application that she [REDACTED]. She contends that when she filled out the [REDACTED] request that she was being hurried by her supervisor and that her computer was malfunctioning.

To insert the number [REDACTED] on her [REDACTED] application, Martin would be required to type two numbers – the [REDACTED] and the [REDACTED]. Martin did not credibly explain how a malfunction with her computer could have caused [REDACTED] to be inserted on the July 25, 2011, Application. Further, Martin admitted she could have read and proofread the PDF version of her [REDACTED], Application, before she submitted it to the MDOM. She failed to do so.

For these reasons, I find that any incorrect information on the [REDACTED], Application occurred as a result of Martin's actions or inactions, not as a result of her computer malfunctioning.

Martin also contended at the appeal hearing that she had already received sufficient punishment because she had lost her state retirement account. Martin contended that a thirty (30) day suspension, rather than termination, would be sufficient punishment.

This tribunal is bound by the Mississippi State Personnel Board Policy and Procedures. Section 10.7.24(B) of that document provides:

. . . If the responding agency has acted in accordance with the published policies, rules and regulations of the MSPB, and if the personnel action taken by the responding agency is allowed under said policies, rules and regulations, the EAB shall not alter the action taken by the agency

MDOM acted in accordance with MSPB policies and rules. Accordingly, this tribunal will not substitute as punishment a punishment less than MDOM's termination of Martin. Accordingly, Martin's termination is AFFIRMED and her appeal is dismissed with prejudice.

SO ORDERED THIS THE 13 DAY OF August, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD

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