

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

FILED

JAN 23 2013

ANGELA MOORE

APPELLANT

VS.

EMPLOYEE APPEALS BOARD

CASE NO. 12-033

MISSISSIPPI DEPARTMENT
OF HUMAN SERVICES

RESPONDENT

ORDER OF HEARING OFFICER

THIS CAUSE having come on to be heard on appeal by Angela Moore, (“**Moore**”) of her termination by the Mississippi Department of Human Services (“**MDHS**”). Moore was represented by Charles E. Gibson, III Attorney at Law and MDHS was represented by William M. Rosamond, Attorney at Law. Also present was the Agency Representative, Ms. Gloria Jackson, Division of Human Resources, MDHS.

Moore was employed as a Department of Human Services (DHS) Eligibility Worker I on October 5, 2011, in a time limited non state- service position. She was terminated on June 11, 2012. Prior to the hearing herein, MDHS moved, *ore tenus*, to dismiss based upon Miss. Code Ann. Section 25-9-107 which allows an Agency to terminate an employee in this position who had not been employed for a period of twelve 12 months. The Motion was denied as Moore had alleged discrimination and harassment, which is an exception to the code section.

FINDINGS OF FACT

Moore’s position with MDHS was time-limited in that she was employed under a provision of the Mississippi Code, Section 25-9-107(c) which excludes such employment from state service and disallows permanent state service. Her job was only available as long as there were federal funds available to fund this position. Moore began her employment in the main DHS office in Jackson and three weeks later, was assigned to the DHS call center in Bolton, MS, a thirty (30) mile commute from her home in Jackson, MS. MDHS allowed its employees to work on compressed time and flex-time schedules. Moore was on a flex-time work schedule at the Bolton Office. Flex-time was offered based upon the need of the employee and the need of the Agency. Moore’s job at the Bolton was to answer calls and interview applicants for eligibility for Tanif and Snap. By memo dated May 3, 2012, MDHS changed all work schedules in the Bolton office. All compressed schedules were changed from 7:00 to 4:30 to 7:30 to 5:00 and the flex- time positions were eliminated. The policy applied to all employees, including

Moore who was the only employee in the Bolton office on the flex-time schedule. Moore did not make a formal request to be transferred from Flex to compressed time.

CONCLUSIONS OF LAW

Moore was employed in a time-limited position which is excluded from state service. Miss. Code Ann. Section 25-9-107(c) (XIV). As a non-state service employee, Moore has no property rights in her job and may be terminated at any time, with no due process rights afforded. MSPB Ch. 2, II. She may grieve and appeal only alleged acts of discrimination based upon race, color, religious creed, national origin, sex, age, disability or political affiliation. MSPB Ch. 2, VI. In this Appeal, Moore has the burden of proving, by a preponderance of the evidence, that the basis for her termination is discrimination based upon one of the foregoing factors. MSPB Policy and Procedures Manual Ch. 10.7 XX. Moore did not provide any evidence of discrimination.

Moore bases her claim of discrimination upon two events. The first is that she was denied flex-time which caused a hardship to her because she had to pick up her children in the afternoons. Moore lived 30 miles from the Bolton office. When she was initially transferred to the Bolton office, Moore was allowed to work a flex schedule. The MSPB allows Agencies to develop modified work schedules which provide for flex-time or compressed work schedules. MSPB Ch.5, I. "Flexitime" is defined as a schedule which offers Agency management a choice to vary employee arrival and departure times from work Id. On May 3, 2012, MDHS adjusted all compressed schedules and eliminated the flex-time positions in the Bolton Call Center to ensure adequate telephone coverage from 4:30 to 5:00 each afternoon as there was a concern that the phones were not being adequately staffed during that time period. The policy applied to all employees at the Bolton office, including Supervisors. There was no evidence presented that Moore's inclusion in this decision was discriminatory in nature but instead, it was based upon the staffing needs of the Agency. The fact that Moore was the only flex-time employee at the Bolton Call center does not in and of itself make the Agency's decision to eliminate her position discriminatory in nature.

The second event upon which Moore claims discrimination is that she was denied leave on two occasions in May following the schedule change. Moore contends that she was under a hardship because she had to leave by 4:30 pick up her school age children at two different schools and was discriminated against when not allowed to do so. Except when taken due to an illness, requests for personal leave are approved at the Agency's discretion. MSPB Ch. 3, II. B. There was no evidence presented that Moore was treated differently from any other employees in this regard. There was no evidence presented that other employees were granted leave to pick up their own children when Moore was not. Again, the denial of personal leave in and of itself, which is discretionary by MDHS, is not tantamount to discrimination.

Based upon these facts and the law herein, Moore failed to sustain her burden of proving that her termination by MDHS was the result of a discriminatory act and her Appeal should be dismissed.

IT IS THEREFORE ORDERED that the Appeal of Angela Moore is hereby **DISMISSED, WITH PREJUDICE.**

SO ORDERED THIS THE 23rd DAY OF JANUARY, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD



WESLA SULLIVAN LEECH
HEARING OFFICER