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JAN 08 2013

EMPLOYEE APPEALS BOARD

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

ALISHA M. PRICE

APPELLANT

VS.

NO. 12-053

MISSISSIPPI DIVISION OF MEDICAID

RESPONDENT

ORDER

A hearing was held on Alisha M. Price's appeal on December 10, 2012. Alisha M. Price (hereinafter "Price" or "Appellant") represented herself. The Mississippi Division of Medicaid (hereinafter "MDOM") was represented by Abbie Koonce.

FINDINGS OF FACT

1. At all material times, Price was employed by the MDOM.
2. Price submitted her initial application for employment with the MDOM on July 20, 2010.
3. On Price's July 20, 2010, application, she represented to the MDOM that she had completed 24 semester hours at [REDACTED] Junior College between the dates of September 19, 1986, to May 19, 1987.
4. Price, on her July 20, 2010, application to MDOM represented that she had completed 20 semester hours at [REDACTED].
5. On April 20, 2012, the Registrar for [REDACTED] Community College; [REDACTED], forwarded a letter to MDOM Human Resources stating the following as to Alisha Michelle Young Price:

'This tribunal takes judicial notice that [REDACTED] Community College is the correct name for [REDACTED] Junior College and that they are the same entity.

The above mentioned student came into our offices today asking for a transcript of her time at [REDACTED]. She only attended two months in 1985 and then left. Her schedule was purged at this point due to non-attendance or non-payment and an academic record was not kept of her work.

6. Price had not on July 20, 2012, completed 24 semester hours at [REDACTED] Junior College as she represented to MDOM on her employment application.

7. On July 20, 2012, the date Price submitted her application of employment with MDOM, Price had completed zero (0) semester hours at [REDACTED] Community College.

8. On July 20, 2012, when Price submitted her employment application to MDOM she had completed 20 credits at [REDACTED].

9. Price only attended [REDACTED] Community College for part of the Fall, 1985, semester. Price quit going to class at [REDACTED] Community College before the end of the Fall, 1985, semester and attended [REDACTED] Community College in the Fall of 1985 for only about two months.

10. Price did not return to [REDACTED] Junior College after the conclusion of the Fall, 1985, semester.

11. Price, during the Fall 1985 semester, at [REDACTED] Junior College only registered for 9 semester hours.

12. Price was terminated from MDOM by letter dated August 30, 2012, with an effective termination date of August 31, 2012.

13. MDOM in its August 30, 2012, termination letter to Price provided the following grounds for her termination:

Group III Offense, No. 4 - "falsification of records, such as,

but not limited to, vouchers, reports, time records, leave records, employment applications, or other official State documents.”

CONCLUSIONS OF LAW

Price, as the Appellant, has the burden of proof on her appeal. *See, Mississippi State Personnel Board Policy and Procedures Manual 10.7.21(C)*. The Mississippi Supreme Court has explained that the administrative rule which places the burden of proof/persuasion on the employee is not merely semantics. Specifically, the Mississippi Supreme Court stated in *Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999) the following:

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.

Thus, to prevail on her appeal, Price 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 Price by the MDOM.

There is no question that Price stated on her July 20, 2010, application that she had completed twenty-four semester hours at [REDACTED] Junior College. She admitted that fact at her appeal hearing. The pertinent question before this tribunal is whether Price met her burden of proof that her statement that she had completed twenty-four semester hours at

████████ Junior College's statement was a mistake, as opposed to an intentional misstatement. In other words, did Price, at her appeal hearing, meet her burden of proof and prove that she made an honest misstatement of fact. Having considered the testimony, demeanor and credibility of Janie Simpson, the only witness to testify for MDOM; Price, the only witness to testify on her behalf; and having considered all documents introduced into evidence, I find that Price failed to meet her burden of proof. The reasons for my opinion follow.

Price testified at her appeal hearing that she did not intend to mislead MDOM when she represented on her July 20, 2010, application that she had completed twenty-four semester hours at █████████ Community College. Price stated that she submitted a request to the Mississippi Personnel Board to waive the minimum educational requirements and to substitute her knowledge and skills in lieu of her lack of education and that the Mississippi Personnel Board granted her request. Therefore, according to Price there was no reason for her to misstate anything to MDOM concerning the number of her completed hours at █████████ Junior College.

It is true that the Mississippi State Personnel Board granted Price an exception to the educational requirement for the position of Medicaid Specialist I. However, Price did not meet her burden of proof at her appeal hearing and prove that the Mississippi State Personnel Board did not rely on her misstatement of fact that she had completed twenty-four semester hours in reaching its decision that it would substitute experience for education. In that regard, Section 4.3.3(C)(2) of the *Mississippi State Personnel Board Policy and Procedures Manual* titled "Waiver of Minimum Qualifications" (*See, appeal hearing Exhibit 11*) provides:

The Mississippi State Personnel Board shall consider but shall not limit its consideration to the following when reviewing a request to waive minimum qualifications:

1.
2. The number of related college credit hours;
3.
4.
5.
6.

(Emphasis added).

Section 4.3.3(C)(2) required that the Mississippi State Personnel Board in deciding if it would waive the minimum qualifications consider “the number of related college credit hours” of Price. The only number of college credit hours for the Mississippi State Personnel Board to consider were the representations by Price that she had completed twenty-four semester hours at [REDACTED] Junior College. In actuality, Price had completed zero hours at [REDACTED] Junior College. Price failed to meet her burden of proof that the Mississippi State Personnel Board did not rely on her misstatement that she had completed twenty-four semester hours at [REDACTED] Junior College in reaching its decision that she should be granted an exception to Medicaid Specialist I requirements and that if it had been aware of the true facts it would have waived the minimum requirements. Thus, the fact that the Personnel Board waived the minimum qualifications for the Medicaid Specialist I position for which Price applied does not assist Price in this matter.

Price also contended at her appeal hearing that she did not know when she submitted her July 20, 2010, application how many hours she had actually completed. Price admitted at her hearing that she attended only one semester at [REDACTED] Junior College, not a year as stated on her Medicaid Specialist I application. During this one

semester she enrolled in only three (3) classes. The three (3) classes could not have equaled twenty-four (24) semester hours even if Price had completed the three (3) classes – which she did not. Price did not complete any of her classes. Accordingly, Price's statement on her July 20, 2010, application that she attended [REDACTED] Junior College from September, 1986, through May, 1987, was clearly not true. This fact, coupled with [REDACTED] [REDACTED] Community College's April 20, 2012, letter to MDOM which stated that Price "only attended two months in 1985 and then left" negates Price's contention that she simply made a mistake in stating she attended [REDACTED] Junior College from August, 1986, to May, 1987. (See, appeal hearing Exhibit 4).

Finally, Price contends that her termination is too severe a punishment for her actions. Price contends that the EAB should reduce her termination to a term of suspension.

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 Price.

In summary, Price failed to meet her burden of proof that she did not, as alleged by MDOM, falsify her July 20, 2010, application of employment. For this reason, Price's termination is AFFIRMED. Her appeal is dismissed with prejudice.

SO ORDERED THIS THE 8 DAY OF January, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: Michael Watts
MICHAEL N. WATTS
Presiding Hearing Officer