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FILED
JUN 22 2012

MISSISSIPPI EMPLOYEE APPEALS BOARD

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

LISA NELSON-TRICE

APPELLANT

VS.

DOCKET NO. 12-012

MISSISSIPPI DIVISION OF MEDICAID

RESPONDENT

ORDER

A hearing was held on Lisa Nelson-Trice's appeal on the 9th day of May, 2012. Lisa Nelson-Trice (hereinafter "Trice" or "Appellant") represented herself. The Mississippi Division of Medicaid (hereinafter "MDOM") was represented by Charles Quarterman.

FINDINGS OF FACT

1. At all material times, Trice was an employee of the MDOM.
2. Trice began her employment with the MDOM on December 1, 2007.
3. Lisa Nelson is the same person as Lisa Nelson-Trice.
4. Trice was terminated from the MDOM with an effective termination date of February 17, 2012.
5. Trice's February 16, 2012, termination letter provided that she was terminated because she had committed the Group III Offense, Subsection 4, "falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications or other official state documents."
6. Trice's termination letter specifically alleged that Trice, on July 26, 2011, submitted a State of Mississippi Application to the MDOM for the Medicaid Specialist II position which represented she had graduated with a bachelor's of science degree.
7. Trice had not obtained a bachelor's degree from [REDACTED] University at the time she submitted her July 26, 2011, Application.

8. On the date of the appeals hearing, Trice did not have a bachelor's of science degree.

9. Trice was provided her pre-termination conference.

10. Trice certified in writing on her July 26, 2011, Application as follows:

By signing this application, I certify that all statements made herein and on any attached documents are true and complete to the best of my knowledge. I authorize the verification of this information by the Mississippi State Personnel Board and any agencies considering me for employment. I know that my misrepresentation herein may lead to the rejection of my application, removal of my name from the list of eligibles, and/or dismissal from state service. I understand that, as a condition of employment, I will be required to present documentation which verifies both my identity and my employment eligibility pursuant to federal immigration law.

11. The minimum qualifications for the Medicaid Specialist II job for which Trice applied on July 26, 2011, were as follows:

EXPERIENCE/EDUCATIONAL REQUIREMENTS:

A Bachelor's Degree from an accredited four-year college or university.

AND

Experience:
Two (2) years as a Medicaid Specialist I.

OR

Education:
An Associate's Degree or completion of sixty (60) semester hours from an accredited college or university;

AND

Experience:
Four (4) years of related experience, of which two (2) years must have been as a Medicaid Specialist I.

12. At the time Trice applied for the Medicaid Specialist II job, Trice had four years of related experience, including two years of experience as a Medicaid Specialist I. At the time Trice applied for the Medicaid Specialist II job, she had an associate's degree from [REDACTED], an accredited college or university.

13. Trice was promoted to Medicaid Specialist II in the Tupelo Regional Office effective September 1, 2011. As a result of Trice's promotion to Medicaid Specialist II, her salary increased \$213.20 per month.

14. At all relevant times, the *Mississippi State Personnel Board Policy and Procedure Manual* Section 4.2.8 provided:

- a.
- b. The falsification of a State of Mississippi application by a state employee may result in dismissal, suspension for up to thirty days, demotion to the previous position and pay level or a combination thereof.

15. Prior to Trice's termination hearing on December 29, 2011, the MDOM had not made a decision as to whether Price would be terminated.

16. Trice's representation on her Application for the Medicaid Specialist II position that she had a bachelor's degree, while incorrect, was not made with the intent to deceive the MDOM, but rather was a mistaken statement of an incorrect fact.

17. Section 4.2.8(b) of the *Mississippi State Personnel Board Policy and Procedure Manual* which prohibits "the falsification of a State of Mississippi application by a state employee" means that the employee's statement was made with the intent to deceive or mislead a State Agency.

CONCLUSIONS OF LAW

Trice, as the Appellant, has the burden of proof on her appeal. To prevail on her appeal, Trice must prove either that (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 Trice by the MDOM.

Reaching a decision in this case requires an analysis of the meaning of “falsification” as that term relates to the *Mississippi State Personnel Board Policy and Procedure Manual*.

Black’s Law Dictionary, Sixth Edition, defines “false” as follows:

Not true. Term also means artificial; counterfeit; assumed or designed to deceive . . . intentionally untrue . . . given to deceit; dishonest . . . willfully and intentionally untrue.

Black’s Law Dictionary, Sixth Edition, defines “false statement” as follows:

Statement knowingly false, or made recklessly without honest belief in its truth, and with purpose to mislead or deceive . . . such as more than erroneous or untrue and import intention to deceive.

In analyzing the definition of “false” within the context of the present case, the question is not simply whether the statement made by Trice was untrue. Clearly it was. The question is whether or not Trice’s statement that she did have a bachelor’s degree was made to deceive the MDOM. Having considered all of the documents introduced into evidence, having considered the testimony of all witnesses, and having closely observed Trice’s demeanor during her testimony at her appeals hearing, I find that Trice’s statement on her July 26, 2011, Application that she had a bachelor’s degree was not made by her with the intent to deceive the MDOM.

Documents introduced into evidence at the appeals hearing showed that Trice anticipated graduating from ██████ University at the end of the Spring semester of 2009. Trice requested permission from ██████ University to be excused from “walking” at her anticipated May, 2009, graduation. (See, Exhibit 14 to appeals hearing). The request by Trice to be excused from “walking” at graduation was sent to ██████ University employees, Cindy Shirley and Sam Myatt, on February 3, 2009. Specifically, Exhibit 14 is an Application for Graduation in May, 2009. Exhibit 14 reflects that an Application for Graduation from May, 2009, from ██████ University was sent from Trice to ██████ University. Later on February 13, 2009, Trice sent a Letter of In Absentia to ██████ ██████, Provost of ██████ University. Trice’s Letter of In Absentia is also a part of Exhibit 14. In her Letter of In Absentia to Dr. Sanderson, Trice stated the following:

I, Lisa D. Trice, am requesting to be excused from the graduation ceremony on the _____ day of May, 2009, at Union University because my financial situation is extremely limited and I really cannot afford any additional charges. . . .

This Letter of In Absentia was faxed to Cindy Shirley on February 13, 2009. As reflected by other portions of Exhibit 14, Cindy Shirley was the Director of Prior Learning & Testing at ██████ University.

Exhibit 14 confirms that as late as February, 2009, Trice anticipated graduating from ██████ University. At the May 9, 2012, appeals hearing the MDOM’s attorney cross-examined Trice in depth about her testimony that she could not state whether from May, 2009, until she submitted her July 6, 2011, Application for promotion she had considered that she had not received her diploma during this period of time. The MDOM’s attorney did an excellent job in his cross-examination of Trice. He made a number of points that

suggested that Trice's testimony that she did not know if she had, or had not, received her diploma was not credible. While perhaps the majority of people may not have been as unconcerned as Trice about not receiving a diploma for the completion of their bachelor's degree, the question before this tribunal is what Trice believed at the time she submitted the July 26, 2011, Application.¹ Trice stated that she did not know whether she did or did not receive her diploma. Trice explained that she had encountered many personal difficulties the past two to three years and was not, on a day to day basis, focused on whether she had or had not received her diploma.

Having considered Trice's tone of voice and body language while testifying and having otherwise evaluated her credibility, I find that at the time she submitted her July 26, 2011, Application and stated she had a bachelor's degree, she did not do so with the intent to deceive the MDOM and that she did not make the statement without an honest belief that what she stated was true. In short, her statement was true "to the best of her knowledge." Trice met her burden of proof by also establishing that she met the qualifications for the Medicaid Specialist II position even though she did not have a bachelor's degree. At the appeals hearing, Trice explained that she was placed on the list for a promotion and was promoted to Medicaid Specialist II position because of her experience and because she had completed an associate's degree from ██████████ Community College. As reflected in the Findings of Fact portion of this opinion, the requirements for the Medicaid Specialist II position were "an Associate's Degree or completion of sixty (60) semester hours from an

¹See, Trice's July 26, 2011, Application which provides in part "by signing this Application, I certify that all statements made herein and . . . are true and complete to the best of my knowledge." (Emphasis added)

accredited college or university and experience: four (4) years related experience, of which two (2) years must have been as a Medicaid Specialist I." It is undisputed that Trice, at the time of her submission of the July 26, 2011, Application held an associate's degree from ██████████ Community College, an accredited college. It is also undisputed that Trice had two years experience as a Medicaid Specialist I at that time. What is not as clear from the above facts is whether Trice had four years of related experience. Trice did not begin her employment with the MDOM until December, 2007. Trice submitted her Application for the Medicaid Specialist II position on July 26, 2011, approximately four months short of a full four year employment with MDOM. Thus, looking solely at Trice's tenure of employment with the MDOM she would not have four years of experience as required for the promotion to the Medicaid Specialist II position. However, Trice had previously worked as a Counselor Assistant for Vocational Rehabilitation from February, 2004, to December, 2007.

At the appeals hearing, Trice testified that she had sufficient related experience and was qualified for the Medicaid Specialist II position without a bachelor's degree. The MDOM did not cross-examine or challenge Trice's testimony that she had four years of related experience. Accordingly, since Trice's testimony on that point was unrefuted, I accept it as true and find as a fact that Trice had four years of related experience, of which two (2) were as a Medicaid Specialist I.

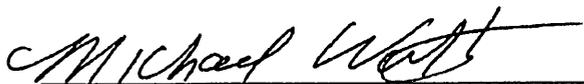
The fact that Trice met the qualifications for the Medicaid Specialist II position without a bachelor's degree, substantiates that Trice had no motive to deceive or mislead MDOM in her July 26, 2011, Application for the Medicaid Specialist II position.

In summary, I find that while Trice stated on her July 26, 2011, Application that she had a bachelor's degree, Trice's representation in this regard, while incorrect, was not made with the intent to deceive or mislead MDOM so Trice could receive a promotion to the position of Medicaid Specialist II. Falsification of records, within the meaning of the *Mississippi State Personnel Board Policy and Procedure Manual*, means that an employee intentionally stated something that was untrue, i.e., that the employee lied. Trice's statement, while incorrect, was not a lie, but an incorrect misstatement of fact. For this reason, her statement was not a falsification of a state record. Accordingly, Trice's termination by the MDOM is reversed.

MDOM is directed to reinstate Trice to her employment status effective as of the date of her termination and to restore to her all of her rights and benefits including back pay, medical leave and personal leave to the extent allowed by law. It is also ordered that Trice be restored to all of her retirement benefits she would have been entitled to had she not been erroneously terminated, provided the integrity of such benefits remain uncompromised in accordance with all applicable laws, policies, rules and regulations.

SO ORDERED THIS THE 22 DAY OF June, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: 
MICHAEL N. WATTS
Presiding Hearing Officer