

**FILED**  
**MAR 20 2013**

**EMPLOYEE APPEALS BOARD**

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**LESSIE MAE BENDER**

**APPELLANT**

**VS.**

**NO.12-060**

**MISSISSIPPI DEPARTMENT OF  
MENTAL HEALTH, ELLISVILLE STATE SCHOOL**

**APPELEE**

**CORRECTED ORDER**

This cause came on for hearing on January 28, 2013, in Ellisville, Mississippi. The Appellant, Lessie Mae Bender, represented herself and Gene Rowzee represented the Mississippi Department of Mental Health ("MDMH").

Lessie Mae Bender is employed by MDMH as a Program Coordinator at Ellisville State School. Bender applied and interviewed for a position as a Director V at Ellisville State School. When Bender was not chosen for that position she filed a grievance alleging discrimination on the basis of age, race, and retaliation for complaints of discrimination in the hiring of her immediate supervisor, William Chastain. In that grievance Bender requested that she be given the Director V position. Bender's grievance was not substantiated and she was not granted any relief. MDMH concluded that their investigation "did not indicate any discrimination based upon age or race in the selection process for the Director V position... [and]... no evidence of retaliation." Consequently, Bender filed a timely appeal of that grievance with the Mississippi Employee Appeals Board.

This tribunal finds as follows: On June 6, 2012, Bender applied for a position as the Employment Training Center Director, a Director V position, with Ellisville State

School. William Chastain, a white male, was responsible for hiring someone to fill the Director V position. Prior to the interviews, Chastain selected Eric Caples, an African American male, and Adrian McDonald, an African American female to sit on a panel with him to interview and assess the candidates for the position. The Panel conducted interviews on August 16, 17, and 21, 2012. In total the Panel interviewed five people for the Director V position. Bender interviewed for the position of Director V on August 17, 2012. In conducting the interviews, the panel asked all of the applicants a list of (written) prepared questions. Each applicant was also asked to respond in writing to a list of prepared questions. After all of the interviews were completed, on August 22, 2012, each panelist scored the individuals who had been interviewed, on a 5 point scale, in the areas of education; length of relevant experience with individuals with developmental disabilities; experience in the vocational environment; people skills; and writing ability. The maximum an applicant could score was 25 points. Bender's scores were as follows: Chastain-20, Caples-18, and McDonald-19, for a total of 57 points. The applicant who was chosen for the job, Renee Marinolich, a white female, scored as follows: Chastain-21, McDonald-22, Caples-21, for a total of 64 points.

Based on the interview with Bender and his previous experience working with a her, Chastain was concerned about Bender's "people skills," and gave Bender a score of two in that area. Based solely on the interview and her written responses to the interview questions, Chastain and McDonald also gave Bender a score of two in people skills. Interviewer Eric Caples and Marinolich's husband previously worked together and are friends. All of the interviewers denied that race, age, or any retaliatory motive played a part in their scoring of Bender. All of the

interviewers denied that they had been influenced not to hire Bender.

Bender's allegations of discrimination were based on the facts that she had not previously been hired for positions that she had applied for; that Dr. O'Neal, one her previous supervisors, crafted one of the interview questions; that Chastain spoke to her in a tone of voice that indicated that she was incapable of understanding why her interview had to be cancelled and rescheduled for a different date; and that Chastain relied on his supervisors (both of whom Bender believed had discriminated against her in the past) to choose the interview panel.

MEAB Rule XX states that "[a]n appealing party shall have the burden of proving that the reasons stated in the notice of the agency's final decision are not true or are not sufficient grounds for the action taken." The tribunal finds that Bender did not provide sufficient credible proof that she had been discriminated against on the basis of race, age or retaliation in the hiring for the Director V position.

For the foregoing reasons MDMH's decision regarding the Appellant's grievance regarding the Director V position is affirmed, and this tribunal finds that the Appellant is not entitled to any relief.

**SO ORDERED THIS THE 19th\_ DAY OF March, 2013.**

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY:   
INGRID DAVE WILLIAMS  
Hearing Officer