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BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

JO ANN LOVE

FILED

APPELLANT

VS.

MAY 16 2014

NO.13-052

MISSISSIPPI DEPARTMENT OF
HUMAN SERVICES

EMPLOYEE APPEALS BOARD

APPELLEE

ORDER

This cause came on for hearing on January 9, 2014, in Jackson, Mississippi and was concluded telephonically on April 15, 2014. The Appellant, Jo Ann Love, appeared pro se, and Greta Harris represented the Mississippi Department of Human Services ("MDHS").

SUMMARY

Jo Ann Love was employed as a MDHS-Program Administrator Senior with the MDHS. On August 9, 2013, Love was terminated for a Group Three, Number One offense of "unauthorized absence or leave in excess of three (3) consecutive working days without required notification and satisfactory explanation to the supervisor or the appointing authority in a timely manner." Love was also charged with a Group Three, Number Fourteen offense of "[a]n act or acts of conduct occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public or to other State

employees." According to the termination notice Love had been absent sporadically from September 11, 2012, until January 2, 2013. Beginning on January 2, 2013, Love was absent from work continuously, with the exception of the two hours she worked on January 2, 2013 and the 44 hours she worked in February 2013, due to medical conditions relating to a workers compensation injury. Love never provided MDHS with adequate medical information to justify her continuing absence from work.

This tribunal finds that MDHS's termination of Love was supported by the evidence and Love's termination is affirmed.

FINDINGS

On September 11, 2012, Love injured herself at work. As a result of the injury Love went on medical leave. On September 24, 2012, Love faxed a "Certificate to Return to School/Work" from Dr. Don A. Gibson to MDHS. The certificate indicated that Love would be able to return to work on September 17, 2012. Love did not return to work on September 17, 2012. During the following weeks Love sent in several medical certificates extending her return to work date. Love returned to work on November 1, 2012, and worked for approximately one month. On December 5, 2012, Love injured herself at work again. Love left work on December 5, 2012, and did not return. On December 12, 2012, and December 26, 2012. Love submitted statements from Dr. Gibson to MDHS indicating that she could

return to work on December 26, 2012 with the following limitations: [REDACTED]

[REDACTED] On December 19, 2012, MDHS sent Love a letter agreeing that Love could return to work with the limitations specified by Dr. Gibson. Love did not return to work on December 26, 2012. On December 28, 2012, Love submitted a statement from Dr. Gibson dated December 20, 2012, indicating that she could return to work on January 2, 2013. Love worked briefly on January 2, 2013. On January 2, 2013, Love submitted another statement from Gibson indicating that she could return to work on January 23, 2013. Love did not return to work on January 23, 2013. On January 24, 2013, Love submitted another medical statement from Dr. Gibson indicating that she could return to work on February 7, 2013. On February 6, 2013, Love submitted a statement from Dr. Gibson indicating that she could return to work on February 11, 2013. On February 12, DHS sent Love a letter agreeing to provide her with reasonable accommodations at work for a period of 30 days. Love returned to work on February 11, 2013, and worked until February 21, 2013. On February 25, 2013, Love submitted a medical statement from Dr. Gibson indicating that she could return to work on March 11, 2013. On March 8, 2013 Love submitted another medical statement from Dr. Gibson indicating that she could return to work on March 25, 2013. On March 22, 2013 Love

submitted a medical statement from Dr. Gibson indicating that she could return to work on April 15, 2013. On April 15, 2013, Love submitted a medical statement from Dr. Gibson to MDHS indicating that she could return to work on May 3, 2013. Love did not return to work on May 3, 2013. On May 6, 2013, Love submitted a medical statement from Dr. Gibson with a return to work date of May 28, 2013. On May 28, 2013, Love submitted a medical statement from Dr. Gibson to MDHS with a return to work date of June 17, 2013. All of the medical statements from Dr. Gibson indicated that Love needed the same accommodations as Gibson had outlined in the December 2012 medical statements.

On June 13, 2013, DHS sent a letter to Love outlining the dates she had been absent from work, and their attempts to accommodate her medical condition. The letter set forth the agency's responsibilities and stated that the agency was willing to provide reasonable workplace accommodations for Love or place her in an equivalent position, "but cannot do so if you do not return to work and/or provide further medical documentation that would warrant your continued absence from the workplace."

On June 17, 2013, Love submitted a medical statement from Dr. Gibson to MDHS with a return to work date of July 9, 2013. Love did not provide any additional information that warranted her continued

absence from the workplace. Love was afforded the opportunity for a pretermination conference on August 6, 2013. On August 9, 2013, DHS sent Love a notice of termination.

At no time did Love present any medical documentation indicating that she could not return to work with the accommodations which Dr. Gibson had outlined and to which DHS had agreed.

OPINION

MEAB Rule XX provides 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." Love could not meet her burden of proof.

It is incontrovertible that Love did not provide a satisfactory explanation to MDHS for her failure to return to work, even though MDHS agreed to provide the accommodations which were outlined in the medical documentation she submitted to the agency. Additionally, MDHS has an obligation to the public to provide services. If an employee fails to report to work for the better part of a year, it is evident that the employee's absence affects DHS' ability to provide the services to which the public is entitled. When an employee fails to provide medical documentation for continual absences MDHS is bound to terminate that employee so that it can provide necessary public services, failure to do so

could constitute negligence in regard to the agency's duties to the public.

For the foregoing reasons Love's termination from MDHS is affirmed.

SO ORDERED THIS THE 16th DAY OF May, 2015.

MISSISSIPPI EMPLOYEE APPEALS
BOARD

BY:


INGRID DAVE WILLIAMS
Hearing Officer