

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

KIMSEY WHIPPS

VS.

MISSISSIPPI DIVISION OF MEDICAID

**FILED**

**SEP 29 2014**

**EMPLOYEE APPEALS BOARD**

APPELLANT

NO. 14-027

APELLEE

**ORDER**

This cause came on for hearing on August 26, 2014, in Jackson, Mississippi. The Appellant, Kimsey Whipps, appeared pro se, and Abbie Koonce and Nick Crawford represented the Mississippi Division of Medicaid ("MDOM").

**SUMMARY**

Kimsey Whipps was employed as an Accountant/Auditor IV with the MDOM. On June 20, 2014, Whipps was terminated for a Group Two, No. One offense of, "insubordination, including, but not limited to . . . failure or refusal to follow supervisor's instruction, perform assigned work, or otherwise comply with applicable established written policy." Specifically, MDOM "determined from . . . internet access reports that during the course of an eight-hour day, you were performing duties associated with your outside job by utilizing sites, Taxslayer.com and IRS.com, used primarily by tax return preparers. Employees of MDOM are permitted to engage in paid outside employment only after authorization from the

supervising Bureau/Office Director, clearance from the Legal Unit, and final approval from the Deputy Administrator." Whipps was also charged with a Group Three, No. Six Offense of "falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications or other official state documents." Specifically, MDOM alleged that Whipps, "recreated a state document and record that is officially generated from the Mississippi Department of Finance and Administration on a monthly basis notifying each state employee of the direct deposit of their earnings, taxes, deductions, net pay, and leave usage." Additionally, Whipps was charged with a Group Three, No. 12 Offense of "unauthorized use or misuse of State Property or records." Specifically, MDOM alleged that Whipps, "frequently accessed Taxslayer.com which simultaneously connects to IRS.com, which are both non-work related sites. The results returned from a search of . . . internet activity for the period of December 20, 2013, until March 5, 2014, revealed that (Whipps) . . . accessed Taxslayer.com and IRS.com during working hours a total of 209 times." Whipps was also charged with a Group Three, No. 14 Offense of "an 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." Specifically, Whipps was cited for faxing a document to the IRS on the MDOM fax machine on behalf of someone else; Recreating state employee paycheck stubs with inaccurate information on them; possessing a tax document summary in her name with an incorrect wage amounts listed; and possessing a "doctored" bank statement. Whipps was also charged with the Group Three, No. 19 Offense of "willful violation of MSPB (Mississippi State Personnel Board) policies and procedures, including, but not limited to refusing to cooperate and/or giving a false statement in an investigation of possible violation of MSPB policies and procedures." Specifically, MDOM alleged that Whipps gave false statements in a March 28, 2014 meeting with MDOM Human Resources investigators.

This tribunal finds that there is sufficient evidence that Whipps committed the Group Two, No. One offense of insubordination in that she did not ask for or receive permission to engage in outside employment; the Group Three, No. 12 offense of unauthorized use or misuse of State property or records, in that she was using MDOM time and resources to prepare tax returns for others; and the Group Three, No. 19 offense of giving a false statement in an investigation, in that she gave false statements during the March 28, 2014 interview with MDOM Human Resources. Therefore Whipps termination is affirmed.

## **FINDINGS**

On March 6, 2014, two women, Dettrick Flowers and her daughter, Michelle Anderson, visited the MDOM offices and requested a meeting with Margaret King, Whipps, supervisor. Flowers and Anderson told King that Whipps prepared tax returns while she was at work at MDOM, and was selling social security numbers and birthdates of Medicaid beneficiaries. King immediately notified upper level management at MDOM and the legal department. Flowers and Anderson signed statements outlining their allegations.

By letter dated March 10, 2014, effective March 7, 2014, Whipps was placed on administrative leave with pay pending an investigation into a Group Three, No. 14 Offense of "an 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 Sate employees."

When Whipps left her office she took a box of information with her including several tax returns for other people that she had in her office. During the investigation, MDOM discovered that between December 20 2013, and March 5, 2014. Whipps accessed the website Taxslayer.com 209 times on her work computer. However, MDOM was unable to

determine how long Whipps spent on Taxslayer.com each time she accessed the site. MDOM also discovered a partially completed tax return on Whipps computer for her boyfriend Keith Flowers. Additionally, MDOM found a letter and form which Whipps admitted to faxing to the IRS, using MDOM equipment, on behalf of Judy Chatman.

MDOM also discovered a number of documents on Whipps computer which Whipps admitted that she created. These documents included multiple "ACE1 paystubs" for herself and others which contained inaccurate salary information, two identical bank statements with Whipps' name as the account holder and the other with Mary Parson's name as the account holder; and a fake Hinds Community College Transcript for Walter Hawkins. MDOM also discovered an envelope in Whipps Office with a list of names and amounts next to each name, for which Whipps could not provide an explanation. Finally, MDOM interviewed employees who claimed that Whipps had prepared their taxes for pay.

On March 28, 2014, Whipps was interviewed by the MDOM Director of Human Resources, Janie Simpson, and MDOM Deputy Administrator of Human Resources, Jennifer Washington, concerning the initial allegations regarding preparation of tax returns at work and stealing Medicaid beneficiary information. Whipps was specifically asked if she prepared

---

<sup>1</sup> "ACE" is the Access Channel for Employees where State Employees can access their paystubs and tax forms online.

tax returns for others at work, and she denied it. Whipps was also questioned about why she recreated the ACE check stubs. Whipps became defensive and had no response other than that they were a template, and could not or would not respond to the question of why the stubs were recreated. At her pre termination conference and at the MEAB hearing, Whipps stated that she created the check stubs as part of an abandoned project for her Master's Degree.

### **DUE PROCESS**

Whipps argued that she did not receive due process because she was placed on administrative leave with pay on March 7, 2014, and her initial hearing with MDOM was March 28, 2014; but she did not receive a final termination notice until June 20, 2014.

§7.2. of the Mississippi State Employee Handbook states that "[i]n extraordinary circumstances, the appointing authority or designated representative may immediately suspend an employee with pay. Such employee must be given an opportunity for a hearing with the appointing authority or designated representative within twenty (20) working days of the suspension, at which time the appointing authority may make a final decision. "

MDOM was not required to provide Whipps with a final decision at any particular time after the March 28, 2014 meeting. The State

Employee Handbook simply states the appointing authority **may** make a decision. After meeting with Whipps on March 28, 2014, MDOM determined that it needed to continue investigating the allegations against Whipps. This was not a violation of Whipps due process rights.

Whipps also argues that MDOM did not give her adequate notice of the Group, Three, No. 19 allegation of "willful violation of MSPB policies and procedures, including, but not limited to refusing to cooperate and/or giving a false statement in an investigation of possible violation of MSPB policies and procedures." Whipps claims that MDOM did not provide specific information about the false statements that she accused of making.

§ 7.3 of the Mississippi Employee Handbook states the "[t]he process which is due to each State Service employee is written notice of a proposed disciplinary action which states with sufficient particularity what charges or allegations are being made concerning the employee."

The pre termination conference notice references Whipps interview with the MDOM Office of Human Resources on March 28, 2014, and goes on to state that Whipps was charged with providing false statements during the investigation process. Additionally, Whipps admitted that the MDOM Director of Human Resources, Janie Simpson, in a telephone conversation following Whipps receipt of the pre termination conference

letter and prior to the pre termination conference, told her specifically which statements MDOM considered false. It is this tribunal's conclusion that Whipps' pre termination conference notice provide sufficient particularity with regard to the allegation or providing false statements. Truly v. Madison General Hospital, 673 F 2d. 763 (5<sup>th</sup> Cir. 1982).

### **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."

Whipps was able to meet her burden of proof with regard to the Group Three, No. Six Offense of "falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications or other official state documents," and the Group Three, No. 14 Offense of "an 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 the other state employees." There is no definition of the term falsification in the Mississippi State Employee Handbook or in Mississippi law. Therefore we look to the list of examples in the description of the Group Three, No. Six

Offense: vouchers, reports, time records, leave records and employment applications. The enumerated documents all imply intent to defraud. There is no doubt that MDOM found recreated pay stubs and other documents on Whipps computer, but there is no evidence that Whipps did or attempted to do anything with these documents. MDOM failed to show that Whipps attempted to use the recreated documents or deceive anyone with the documents. In sum, there was no evidence of intent to defraud. The mere fact that Whipps recreated the documents simply does not amount to falsification. The other item cited under this charge, faxing a letter to the Internal Revenue Service on behalf of a friend, does not rise to the level of a Group Three, No. 14 Offense.

With regard to the Group Two, No. One Offense of insubordination there was sufficient evidence to support MDOM's conclusion that Whipps had committed this offense. Whipps acknowledged that she did not inform MDOM that she was involved in outside employment. Failure to inform MDOM that she was engaged in outside employment was insubordinate in that she failed to comply with established written policy.

Furthermore, there was evidence to support the charge with regard to the Group Three, No. 12 Offense of unauthorized use or misuse of state property or records. There was ample evidence to support MDOM's finding that Whipps was preparing tax returns for pay at work including

the presence of tax returns in her office, the number of times that Whipps accessed Tax Slayer, and the receipt of funds from persons who said she prepared their taxes.

Finally, there was sufficient evidence to support the Group Three, No. 19 Offense of giving a false statement in an investigation of possible violation of MSPB policies and procedures. After listening to the recording of the March 28, 2014, interview the undersigned Hearing Officer concludes that Whipps made the false statements enumerated in the notice of termination.

For the foregoing reasons Whipps' termination from MDOM is affirmed.

**SO ORDERED THIS THE 29th DAY OF September, 2013.**

MISSISSIPPI EMPLOYEE APPEALS  
BOARD

BY:

  
**INGRID DAVE WILLIAMS**  
Hearing Officer