

FULL BOARD OF THE MISSISSIPPI EMPLOYEE APPEALS BOARD

CEDRIC T. PEGUES

VS.

NORTH MISSISSIPPI REGIONAL CENTER
MISSISSIPPI DEPARTMENT OF MENTAL HEALTH

FILED

JAN 29 2015

EMPLOYEE APPEALS BOARD

APPELLANT

NO.14-022

RESPONDENT

ORDER OF EAB BOARD, EN BANC

Appellant, Cedric T. Pegues, filed an appeal with the Employee Appeals Board, *en banc*. Pegues appealed the Order entered by Hearing Officer Michael N. Watts on December 1, 2014. The EAB, *en banc*, has reviewed the briefs of the parties and the record in this matter. The EAB, *en banc*, affirms the decision of Hearing Officer Watts and affirms the termination of Pegues by the North Mississippi Regional Center/Mississippi Department of Mental Health ("NMRC"). The reasons for the EAB, *en banc*, opinion are set forth below:

FACTS

Pegues was employed at NMRC. Pegues filed a grievance with NMRC on May 12, 2014. On May 19, 2014, Pegues met with his immediate supervisor, Brent Avant and Frank Dodd, NMRC Human Resources Director. Following the meeting, at 1:08 p.m. on May 19, 2014, Pegues sent an email to Avant stating, "Brent, I putting (sic) in my two weeks notice today. . . I am requesting that my last official day of Fri. 05/30/2014... thx. CP." At 1:24 p.m. Avant forwarded Pegues email to

Frank Dodd and Kerry Nichols, Avant's supervisor. None of the parties who received Pegues' email responded to it. On May 21, 2014 Pegues sent an email to Avant stating "Brent, though I haven't received a response, I'm rescinding my resignation letter submitted for my last official day of Fr. 05/30/2014. . . apologize for any inconvenience. . .thx. CP." On May 29, 2014 NMRC informed Pegues that it would not be accepting the withdrawal of his resignation.

On June 11, 2014, Pegues filed a Notice of Appeal with the Employee Appeals Board. A hearing was held on August 12, 2014, and October 24, 2014. The Hearing Officer's Order was issued on December 2, 2014.

In the Hearing Officer's Order he summarized the issues before the EAB as follows:

- (1) that his grievance (Pegues) was not handled properly because when the grievance was initially submitted to Kerry Nichols, Nichols gave his grievance to Avant for handling, even though Pegues' grievance alleged a grievance against Avant his immediate supervisor;
- (2) that Pegues was constructively forced to resign; and
- (3) that Mississippi law allowed Pegues to withdraw his resignation before his resignation was accepted in writing, and that he in fact withdrew his resignation timely because NMRC never accepted his May 19, 2014 resignation in writing.

The Hearing Officer determined that Pegues grievance was properly handled; that he was not constructively forced to resign; and did not meet his burden of proof that NMRC did not accept his resignation.

OPINION

In his request for Full Board Review, Pegues apparently presents two issues for review. The first issue is that The Hearing Officer considered irrelevant testimony in making his decision that Pegues was not constructively forced to resign. Specifically, Pegues argues that the Hearing Officer considered irrelevant facts in making that determination. The second issue is that the Hearing Officer determination that Pegues grievance was not mishandled is not supported by the evidence.

With some exceptions, in EAB hearings all relevant evidence is admissible. See EAB Rule 19. (C). There is no definition of "relevant evidence" in the EAB Rules. However, *The Mississippi Rules of Evidence*, Rule 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Pegues asserted that the circumstances surrounding his grievance had forced him to resign. The Hearing Officer had to determine if that assertion was in fact correct. In order to make that determination the Hearing Officer considered the facts that Pegues had discussed retirement with his wife prior to filing the grievance, and that he had was upset and angry with a fellow employee, Brian Simmons. The facts that Pegues was upset with Simmons, and had a discussion with his wife about

possibly retiring makes the existence of the fact that Pegues was not constructively forced to resign more likely. Consequently, that evidence was relevant and properly considered by the Hearing Officer.

With regard to Pegues allegation that the Hearing Officer did not properly address the issue of his grievance being mishandled, in the EAB Order the Hearing Officer specifically states as follows:

This tribunal, having considered Pegues' grievance form and the testimony of all witnesses, finds as a fact that Pegues' allegation against Brent Avant did not include an allegation of discrimination or harassment. Therefore, it was not improper for Nichols to provide Pegues' grievance to Avant during the Step I grievance process.

The Full Board having reviewed the evidence and testimony finds that the Hearing Officer's factual determination that the grievance was not mishandled is correct and should not be reversed.

For the foregoing reasons the EAB Order in the instant matter is affirmed.

SO ORDERED this the 29th day of January, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD
FULL BOARD

BY: 
INGRID DAVE WILLIAMS
Hearing Officer