

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

CAROLYN MYLES

VS.

MISSISSIPPI DEVELOPMENT AUTHORITY

**FILED**  
**JUL 13 2015**

**EMPLOYEE APPEALS BOARD**

APPELLANT

NO.15-007

APPELLEE

ORDER

This cause came on for hearing on April 29, 2015, May 12, 2015, and May 13, 2015, in Jackson, Mississippi. The Appellant, Carolyn Myles appeared pro se, and Royce Cole represented the Mississippi Development Authority ("MDA").

SUMMARY

Carolyn Myles is employed as an Accountant Auditor III with MDA. On February 4, 2015, Myles filed a grievance with MDA alleging that she was being treated unfairly in her position as Accountant Auditor III. In the first level meeting on the grievance Myles alleged age discrimination, race discrimination and a hostile work environment. By letter dated February 19, 2015, but actually given to Myles on February 24, 2015, in response to the grievance process, Myles was reprimanded for insubordination. On February 24, 2015, Myles filed a grievance alleging that the reprimand constituted retaliation for filing the February 4, 2015, grievance. On March 11 2015, Myles filed an appeal of both grievances with the EAB attaching copies of both grievances. On March 13, 2015, Myles received a final response to the February 24, 2015 grievance. The EAB treated Myles appeal as an appeal of both grievances. In her appeal, Myles alleged retaliation for filing a grievance, age discrimination, and hostile work environment. This tribunal

hereby finds that Myles met her burden of proof with regard to all claims and finds that Myles was discriminated against on the basis of age, was subject to a hostile work environment, and was retaliated against because she filed a grievance. This tribunal orders MDA to take steps to eliminate the age discrimination and hostile work environment, and orders that the reprimand be removed from Myles' personnel file.

### **FINDINGS**

Carolyn Myles is 53 years of age and a 23 year state employee. Myles has been employed with MDA for 8 years in accounts receivable. While at MDA, Myles was promoted from Accountant Auditor II to Accountant Auditor III. Prior to February 2015, Myles' immediate supervisor was Tammy Bridgeman. Bridgeman left MDA in October of 2014. Prior to Bridgeman's departure, Myles' normal duties consisted primarily of processing payments and purchase orders. Following Bridgeman's departure, Myles was supervised by Bridgeman's supervisor, David Allard, who reported to Brian Daniel. In early 2015, Allard was preparing for his own retirement which occurred on February 15, 2015. Because Allard was preparing for retirement, Brian Daniel decided that he would directly supervise Myles. Prior to November of 2014, Daniel had limited direct personal interaction with Myles. In December of 2014, in addition to her normal duties, Myles was tasked with training a new employee, Lynette Hearn.

Brian Daniel is the 41 year old Director of Accounting and Finance at MDA and is responsible for overseeing the accounting functions of the agency. Daniel has been employed in that position since 2006. Daniel has been

working directly with Myles since November of 2014.

Brandi Smith is 30 year old female. Smith has had a remarkable career at MDA. Smith has an Associate degree. Smith started working at MDA in 2010 as a temporary employee, scanning documents. In late 2010, Smith obtained a state service position with MDA as an Accountant Auditor. In 2014, Smith was promoted from an Accountant Auditor I to an Accountant Auditor II. However, in that job she was not actually doing accounting work, but was acting as Brian Daniel's administrative assistant. In 2014, Smith applied for a job as Accountant Auditor III, but was not deemed qualified by the Mississippi State Personnel Board. Smith has advertised that Daniel helped her obtain her position as Accountant Auditor I, and her promotion to Accountant Auditor II.

Over the course of time that Smith has been employed, workplace tension developed between Smith and Myles to the point that Myles and Smith were sent to a four hour diversity training course to assist them in resolving their workplace issues. Daniel was aware that Smith and Myles did not get along, and that "Smith could rub people the wrong way." Daniel believes that Myles is not "as fast" as Smith in learning new processes for work.

Lynette Hearn is a 32 year old Accounting Auditor I at MDA. Hearn began working at MDA on December 4, 2014. Myles was assigned to train Hearn.

Mississippi's Accountability System for Government Information and Collaboration (MAGIC) is "the statewide accounting and procurement system of record, encompassing Finance (accounting, budgeting, grants management), Logistics (procurement, fleet management, inventory management), and Data

Warehouse functionality.”<sup>1</sup> “The curriculum for Phase I MAGIC training consists of over 35 courses that cover the full functionality of the system . . . MAGIC training will be role based. “Role based training” means that persons are enrolled in courses based upon their specific job responsibilities. Each person will have a customized training track consisting of the courses needed to do his or her job . . . .”<sup>2</sup> MAGIC was designed to replace the state’s previous accounting system, SPHARS, and state employees were trained in MAGIC during April, May and June of 2014. MAGIC went “live” in July of 2014. The implementation of MAGIC has been extremely difficult, and there have been numerous problems in the transition from SPAHRS to MAGIC. As of the writing of this Order, MAGIC is still fraught with problems and has not been fully implemented.<sup>3</sup>

Hearn is employed as an Accountant Auditor I in the Accounts Receivable department. In essence, she is the junior employee in Accounts Receivable and Myles is the senior employee. When Hearn started working at MDA, David Allard assigned Myles to train her. Myles did some of Hearn’s training but when questioned by Daniel, Hearn stated that Myles training method “did not work for me.” According to Hearn, she was getting bits and pieces from Myles, and not the whole picture. However, Hearn did not address her issues with her training with Myles nor anyone else until Daniel asked her about it. Daniel never addressed the perceived problem with Hearn’s training with Myles. Hearn did not have access to MAGIC, the primary means of doing her job, until

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<sup>1</sup> [www.mmrs.state.ms.us/MAGIC](http://www.mmrs.state.ms.us/MAGIC)

<sup>2</sup> [www.mmrs.staae.ms.us/MAGIC\\_Training/index.shtml](http://www.mmrs.staae.ms.us/MAGIC_Training/index.shtml)

<sup>3</sup> The Tribunal takes judicial notice of these facts

January of 2015. Because of the extreme difficulty with the transition to MAGIC from mid-December through the holidays, payments could not be processed because of problems with the system. Because of all the problems with implementing MAGIC, Myles had a limited amount of time to interact with Hearn.

In January of 2015, there was a problem with processing invoices in MAGIC. Daniel spoke to Allard about a particular invoice which had not been paid. Myles was later able to process the payment. As Myles was speaking to Allard about another matter, Daniel walked in and commented that it was odd that things only got paid after he asked about them. He then directed Myles to give him all of the unpaid invoices over one week old. Myles gave four unprocessed invoices to Allard and went home in distress because she was upset about Daniel's implication that she was not timely processing her work.

In January of 2015, there was a specific problem with the "S&D" payment in MAGIC for which Myles was responsible. When DFA offered a special training specifically related to the "S&D" problem, Daniel elected to send Brandy Smith, as Daniel stated, "for no particular reason." When Smith went to the training, she was not working in accounts receivable and was in fact acting as Daniel's administrative assistant.

On February 2, 2015, Myles sent an email to Jay McCarthy, Daniel's supervisor, and copied Human Resources asking for assistance in dealing with Daniel. She stated, "Brian has displayed double standards, favoritism towards a certain employee and does not value my job expertise. . . I am very concerned

and have been so distraught I have had to miss work due to the extreme emotional distress . . ." Later that same day at about 1:00 p.m., Daniel called a meeting with Myles, Smith and Hearn. According to Daniel, the meeting lasted approximately five minutes. According to Smith, Daniel had time to explain that everyone in accounts payable would be reporting to him, that he was changing work assignments, that Myles would not be processing logistics invoices and government payments, and that Myles would no longer be training Lynette Hearn, but that Smith would be training Hearn. According to Daniel, the meeting lasted less than five minutes, but Myles was so disrespectful and interrupted him to such a degree that he was unable to completely spell out the proposed changes he had for Myles and accounts receivable, and he was forced to end the meeting abruptly. According to Smith, "Carolyn was outraged by this." According to Hearn, "In this meeting Carolyn was very defensive, she made it seem like she was being attacked and that was not the case, and was also argumentative. Carolyn did not want to let Brian finish his sentences, she was constantly interrupting him. In the meeting at one point he had to just stop speaking and he had to ask her was she going to let him speak." Given the length of the meeting and the amount of information disseminated, this tribunal finds Daniel's, Smith's, and Hearn's accounts of the meeting not credible. However, this tribunal does find that as Daniel was outlining the proposed changes to Myles job duties, Myles became upset and repeatedly asked Daniel why he was changing her job duties.

Prior to Daniel making changes in the way accounts receivable were

handled, Myles acted as a "gatekeeper" and distributed the work to the other accountants in the department. Daniel never consulted with Allard or Myles about the reorganization. As a result of Daniel's reorganization, the purchase order processing was turned over to Hearn, an employee who had three months experience and had only had access to MAGIC for two months. Additionally, Hearn's training was turned over to Smith, who had previously been Daniel's administrative assistant. Daniel has not made changes to any other department following Allard's retirement.

On the morning of February 3, 2015, Myles wrote another email to HR complaining about the changes that Daniel made, stating, "I was informed I will no longer be doing the most difficult payments in Account Payable, the new employee will processing the payment and this certain employee will be training her. The Purchase Orders it (sic) the most difficult payment to process and have a lot of problems. I feel that I am been (sic) removed from any problems solving that occurred with the Purchase Orders. He is moving me out of the way for this employee . . . " On The following afternoon, February 4, 2015, Daniel wrote an email to Myles stating, "I attempted to discuss these changes with you on Monday when we had our meeting to discuss the reassignment of duties. You did not give me an opportunity to finish my explanation before you began behavior I consider to be disrespectful and insubordinate. As further evidence that you were not receptive or open to the discussion, I informed you along with Brandi and Lynette that effective Monday you are to bring any issues or questions to me and not David . . . ."On February 5, 2015, Myles responded, "I do

work with my fellow employees in a respectful and courteous manner. I conduct myself in a professional manner in all aspects of your (sic) job. I was not disrespectful and insubordinating (sic) with you, I was just asking about the change why you was taking my work task away and give it to a lower position employee that is not in the Accounts Payable unit. You just promoted your AA." Daniel forwarded Myles' email to the HR Director McKey stating, "We need to discuss this ASAP. I do not feel the agency can let this go as is. She needs to be disciplined as per the State Employee handbook. We are heading down the same road we are on with the other personnel issue I have . . . The below email (referring to Myles, February 5, 2015 email) is just another example of how she does not see how her behavior and actions are disrespectful to her coworkers and her lack of respect for management."

These emails make it apparent that Myles' perfectly respectful response constituted an act of insubordination in Daniel's opinion. Additionally, he seems to want to discipline Myles for differing with him (understandably) in her assessment of her behavior.

Myles filed her grievance alleging age discrimination, race discrimination and hostile work environment on February 4, 2015. Following Myles' grievance, Jennifer Sledge, Human Resources Specialist, investigated Myles' allegations. On February 10, 2015, Sledge spoke with Smith and Hearn who corroborated Daniel's allegations about Myles' behavior at the meeting. Later that same day, Smith and Hearn sought Sledge out to file complaints about Myles' hostility and bullying. Smith and Hearn provided statements to Sledge.

On February 19, 2015, in “response” to Myles' grievance she was provided a letter in which she was cited for a Group Two, No. 1 offense of insubordination. The citation of the Group Two offense was apparently based on Myles' behavior at the February 2, 2015, meeting and the Smith and Hearn statements.

Although Myles alleged that she was discriminated against by Daniel, there was no actual investigation into whether Daniel discriminated against Myles. Instead, Human Resources investigated whether there was a history of discrimination in the Accounting Department. No one was questioned about specific discrimination against Myles.

### **OPINION**

In her appeal, Myles claimed that she was the victim of age discrimination, and a hostile work environment.

First, the tribunal must address the reprimand issued to Myles within the context of the grievance procedure. It is patently clear from the facts that Myles was reprimanded in retaliation for filing a grievance. The evidence shows that Myles was upset about Daniel's reassignment of her duties and questioned Daniel's decision in a meeting that only lasted a few minutes. When Daniel addressed the issue by email with Myles, she politely contradicted his version of the meeting—but he responded to her reply with insistence that the email was insubordinate. Additionally, there were no complaints about Myles until MDA started looking into Myles' grievance and spoke with Smith and Hearn, who were the beneficiaries of the discrimination against Myles.

MDA argues that the reprimand is not a reprimand and is merely a

response to the grievance. This tribunal does not agree. The response cites Myles for insubordination, and quotes from the Mississippi State Personnel Board Employee Handbook defining the offense of insubordination. Furthermore, Myles is cautioned about possible dismissal. In the context of a grievance, this response cannot be seen as anything else but a retaliatory reprimand. The mere fact that it is placed within the context of a grievance does not make it something else.

With regard to the claim of age discrimination, there is ample evidence that Myles was treated differently because of her age. Daniel interpreted whatever issues Myles was having with MAGIC as her being "slow." Additionally, Myles' job duty training Hearn was taken away from her and given to a younger woman without any objective reason, other than Daniel's feeling that Smith was catching on faster--when in fact there were a number of objective reasons, involving the implementation of MAGIC, for the delay in Hearn's training. Additionally, when training was provided related to Myles' job, Smith was sent to the training instead of Myles without any justification.

With regard to the hostile work environment, it has recently been recognized that hostile work environment claims may be advanced when there is a claim of age discrimination. *Deidol v. Best Chevrolet, Incorporated*, 655 F.3d 435 (5<sup>th</sup> Cir. 2011) To establish a claim of hostile work environment as a result of age discrimination Myles must show "that (1) she was over the age of 40; (2) she was subjected to harassment, either through words or actions, based on age; (3) the nature of the harassment was such that it created an objectively

intimidating, hostile or offensive work environment; and (4) there exists some basis for liability on the part of the employer."

This tribunal finds that Myles was over 40. This Tribunal also finds that Myles was subject to harassment based on age. This is clear from the retaliatory reprimand, the questioning of her handling of accounts payable, the fact that some of her job duties were farmed out to younger employees with less experience and training, and that she was denied the training that she needed to do her job.

Next, we must determine if the harassment created an objectively intimidating, hostile, or offensive work environment. "For harassment to be sufficiently severe or pervasive to alter the conditions of the victim's employment, the conduct complained of must be both objectively and subjectively offensive . . . Thus, not only must the victim perceive the environment as hostile, the conduct must also be such that a reasonable person would find it to be hostile. . . ." *EEOC v. WC&M, Inc.*, 49 F.3d 393 (5<sup>th</sup> Cir. 2007) citing *Harris v. Forklift Sys*, 510 US. 17, at 21-22. This tribunal finds that the conduct that Myles was subject to was subjectively and objectively hostile. Myles stated many times in the hearing that Daniel's attitude and actions were very stressful and at one point caused her to take leave because she could not handle the stress. It goes without saying that having your job duties arbitrarily doled out to younger and less experienced workers is a hostile act based upon age. It is axiomatic that not being allowed to train in key elements of your job duties would objectively be perceived as a hostile act. The harassment of Myles did create an intimidating

and offensive work environment.

For the foregoing reasons, this tribunal finds that Myles was improperly reprimanded, discriminated against on the basis of age and was subject to a hostile work environment. As previously stated, MDA is ordered to remove the "reprimand" from Myles personnel file. MDA is also ordered to reinstate Myles' former job duties and to make any necessary changes to Myles' working conditions to address the hostile work environment.

**SO ORDERED THIS THE 13th DAY OF July, 2015.**

MISSISSIPPI EMPLOYEE APPEALS  
BOARD

BY:

  
**INGRID DAVE WILLIAMS**  
Hearing Officer