

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

TAUNYA SMITH

FILED

APPELLANT

VS.

JUL 28 2015

NO.15-017

MISSISSIPPI DEVELOPMENT
AUTHORITY

EMPLOYEE APPEALS BOARD

APPELLEE

ORDER

This cause came on for hearing on June 9, 10, and 16, 2015, in Jackson, Mississippi. The Appellant, Taunya Smith, was represented by Margarete Meeks, and Royce Cole represented the Mississippi Development Authority ("MDA").

SUMMARY

Taunya Smith was employed as Associate Manager Senior Finance with the Community Services Division of MDA. On April 6, 2015, Smith was terminated for a Group Three, Number 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 other State employees." Specifically, Smith was terminated "due to chronic absenteeism" making her "unable to perform the essential functions . . ." of her position.

This tribunal finds that MDA's termination of Smith was supported by

the evidence and Smith's termination is affirmed.

FINDINGS

In Smith's position as MDA-Associate Manager Senior Finance she administered grants from MDA to small municipalities for infrastructure improvements. In that position Smith was required to provide accurate and timely service to the municipalities, and to make site visits to the recipients of the grants. The nature of the work required timely processing of the grants themselves and of payments made in the administration of the grants.

In Smith's evaluation, signed on February 5, 2014, Smith's supervisor, Tracey Giles noted that Smith needed to improve in meeting deadlines and the quality of her work product. Giles also noted that Smith needed improvement in providing accurate and timely service. However, Smith had an overall successful rating of 3.0.

On April 17, 2014, Smith received a verbal warning from Giles regarding her excessive absences and leave without pay status for the two years prior to the date of the "verbal warning." In the documentation of that warning it is noted that Smith had a pattern of being in leave without pay every month. Giles stated "Although we realize that much of the time away from work is a result of medical issues, your excessive use of 'leave without pay' causes great concern from our perspective. If there is

a medical condition that requires accommodation from the agency, we need to be made aware of it so that we can make adjustments as necessary." Giles also stated, "We cannot emphasize enough how important it is for you to take control of your absences. The pattern of excessive absences cannot continue. If it does, we will have no choice but to take further disciplinary action, which could result in a written reprimand and/or suspension without pay, demotion, or dismissal." Following the verbal warning Smith continued to experience health issues and used all of her accrued personal and major medical leave, placing her into leave without pay status.

On May 16, 2014, Smith was diagnosed with Fibromyalgia. Following the diagnosis, Smith decided to request leave under the Family Medical Leave Act. In May of 2015, Smith used all of her personal leave, all of her major medical leave and 38.35 hours of FMLA leave without pay. That pattern continued through November of 2014, with Smith exhausting all of her personal leave all of her major medical leave and using substantive quantities of her FMLA leave, which was leave without pay. Finally, in December of 2014, Smith exhausted her FMLA leave, and was in leave without pay status for 94.5 hours. In January and February of 2015, that pattern continued.

While Smith was missing so much time from work, it was difficult for

her municipal clients to reach her. Additionally, when Smith's work was given to another employee, a number of errors in the processing of the payments to municipalities were discovered.

Giles conducted Smith's performance evaluation on February 25, 2015. In that evaluation, Giles noted that Smith needed to improve in many of the assessed areas. Giles assessment indicated that Smith had not demonstrated proficiency in the quality of her work productivity, in meeting the needs of the customers, in providing timely and accurate service, productivity, and carrying her fair share of the workload, in overcoming obstacles, operating under specific time constraints and within specified deadlines, and prioritizing to get the job done. As a result of that assessment Smith received a 2.4 rating indicating that improvement was needed. Smith signed that Performance Assessment.

On March 6, 2015, Smith received the written reprimand and pretermination disciplinary notice, citing her for chronic absenteeism and work errors.

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." Smith could not meet her burden of proof.

It is incontrovertible that Smith was chronically absent from work. While this tribunal empathizes with her health struggles and her attempts to deal with the chronic condition of fibromyalgia, those issues do not absolve Smith from the requirement that she be at work and be available to perform her job duties accurately.

Smith claims that she was fired because she took FMLA leave. Pursuant to *Hunter v Valley View Local Schools*, 579 F. 3d 688 (6th Cir. 2009), in order to establish a claim for FMLA discrimination, Smith must first prove that MDA discriminated against her because of her FMLA leave. There is insufficient evidence to support this contention. In *Hunter*, the court noted that Hunter was placed on involuntary leave because of excessive absenteeism and that Hunter's supervisor noted that "most of the absences on Hunter's record were due to FMLA leave." That is simply not the case in the instant matter. Smith was absent from work and took substantial amounts of leave without pay prior to requesting FMLA leave, and Smith continued to take large amounts of leave without pay following the exhaustion of her FMLA leave. Absent Smith's use of FMLA leave the records show that in most months Smith was absent from work for significant amounts of time.

In the Context of the Americans with Disabilities Act, it is axiomatic that attendance at work is an essential function of the job. *EEOC v. Ford*

Motor Company, 782 F. 3d 753 (6th Cir. 2015) If Smith cannot come to work, regardless of the reason for her inability to attend, she cannot do her job and she can be terminated.

Smith did not provide sufficient proof 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; nor was she able to provide proof that she was terminated because she exercised her right to take FMLA leave.

For the foregoing reasons Smith's termination from MDA is affirmed.

SO ORDERED THIS THE 28th DAY OF July, 2015.

MISSISSIPPI EMPLOYEE APPEALS
BOARD

BY:


INGRID DAVE WILLIAMS
Hearing Officer