

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

LEAVERN GUY, JR.

FILED

APPELLANT

VS.

AUG 07 2015

CAUSE NO.: 14-059

MISSISSIPPI DEPARTMENT OF
HUMAN SERVICES

EMPLOYEE APPEALS BOARD

APPELLEE

ORDER

This matter came on for final hearing before Hearing Officer, B. Ray Therrell, II, on July 8, 2015, at the Mississippi Department of Human Services Offices in Hattiesburg, Mississippi, on the appeal of the Appellant, Leavern Guy, Jr. (hereafter referred to as "Guy" or "Appellant"), of his termination from employment with the Mississippi Department of Human Services (hereafter referred to as "MDHS" or "Appellee"). Present at the hearing were the Honorable Steven P. Wansley representing MDHS and the Agency Representative, Ms. Gloria Jackson. The Appellant failed to appear, as noticed.

FACTS

Guy was a time-limited employee employed as Family Protection Worker with MDHS. By letter dated December 9, 2014, MDHS terminated Guy from his employment with the MDHS, effective December 11, 2014. Guy appealed his termination to the MEAB alleging his termination was based on personal issues, retaliation, and racial discrimination. A hearing was set for March 3, 2015 at the MDHS Offices located in Hattiesburg, Mississippi. The hearing was continued until May 5, 2015, to allow the parties to each file their witness lists and for the Appellant to receive a copy of an investigation report regarding his termination. The hearing was continued a second time due to bad weather and reset for July 8, 2015, at the MDHS offices located in Hattiesburg, Mississippi. Both parties were noticed of the hearing date on May 21, 2015, by the MEAB. Guy failed to appear. Counsel for MDHS and its agency representative,

Ms. Gloria Jackson appeared. After waiting approximately thirty (30) minutes, the hearing officer proceeded with the hearing.

OPINION

MEAB Rule 18 A. provides that “The purpose of the hearing is to ascertain the truth.” At the July 8, 2015 hearing, the agency representative, Ms. Gloria Jackson, testified that Guy was a non-state time limited employee with MDHS. As a time limited employee, Guy had no property rights in his position. Evidence was introduced in the form of an acknowledgment signed by Guy informing him of his time limited employment status with MDHS. Ms. Jackson also testified MDHS had performed an investigation into Guy’s alleged actions, and found his actions warranted termination. She further stated that while Guy was not entitled to due process, MDHS followed all the necessary rules and regulations with regards to his termination. It was clear from the testimony and evidence presented, Guy was a non-state employee as defined by the Mississippi State Employee Handbook.

A key distinction between state service employees and non-state service employees is that state service employees may only be terminated for good cause, after written notice and a hearing. Miss. Code Ann. § 25-9-127 (Rev.2006). However, non-state service employees, including probationary state service employees during the first twelve months of employment, are not afforded this protection. *Id.* Non-state service employees may be terminated, without notice, for any reason other than "on the basis of race, color, creed, sex, religion, national origin, age, disability, or political affiliation; and/or a violation of a right otherwise specifically protected by the U.S. Constitution or other law." *Employee Appeals Board Administrative Rules*, July 2003, Appendix A, Grievable Issues, P. 19 section D.; *Miss. Dep't of Transp. v. Rutland*, 965 So.2d 696, 699-700 (¶ 3) (Miss. Ct. App. 2007).

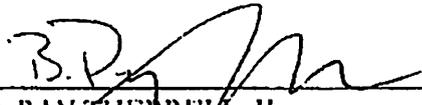
Guy, in his MEAB appeal notice, alleged racial discrimination as reason for his termination

from his position of Family Protection Worker with MDHS. MEAB Rule 20. B. states 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. There is no requirement that the agency supports their decision to terminate an employee with “substantial evidence.” The burden is on the employee to show that reasons for the agency’s decision are not true or are not sufficient grounds for the action taken. Thus, the issue is whether Guy met his burden of proof that he was terminated from his position as Family Protection Worker in whole, or in part, because of his race.

After considering the testimony and having considered all exhibits introduced into evidence, the hearing officer finds as a fact that Guy’s termination from the MDHS was not caused, in whole or in part, because of racial discrimination against him. Guy was given notice of the hearing date. Guy failed to appear or provide good cause for his absence, and without his testimony and evidence, he has failed to meet his burden to show his termination was a result of racial discrimination. The appeal of the Appellant is hereby dismissed, with prejudice.

SO ORDERED AND ADJUDGED, this the 5th day of August, 2015.

MISSISSIPPI EMPLOYEE APPEALS BOARD



B. RAY THERRELL, II
Presiding Hearing Officer