

DAVID EICHELBERGER,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-03

OPINION

INTRODUCTION

The Appellant, David Eichelberger, appealed the decision of the Baltimore County Board of Education (local board) to terminate his employment. The local board filed a Motion to Dismiss on the basis of timeliness. The Appellant responded to the Motion. The local board filed a Reply and a Motion for Summary Affirmance on the merits.

FACTUAL BACKGROUND

The Appellant was employed by Baltimore County Public Schools (“BCPS”) as an Operations Supervisor in the Logistics Department for 8 years. (T.18, 19). In his position as an Operations Supervisor, Mr. Eichelberger was given a credit card – the Procurement Card (“P-Card”). The purpose of the P-Card is to allow employees to make small purchases of work-related items. (T.97-98). The card is blue and has “Baltimore County Public Schools” written on it. (T.59). The Appellant was trained on how to use the P-Card. (T.21). The employee is to keep receipts of anything he purchases. Once a month those receipts are submitted to his supervisor, who checks what was submitted and signs off. (T.21).

The Appellant was also trained as to what he was to do if he inadvertently purchased an item that was not BCPS-related. The employee would have to contact the P-Card administrator or the accounting department to let them know about the mistake and reimburse BCPS. (T.21 & 112).

From August 2010 to February 2013, the Appellant made at least 7 “inadvertent” charges on the P-Card. They were:

- Dropcam.com, \$279.00 – August 2010
- Sprint Wireless, \$229.97 – August 2010
- Sprint Wireless, \$138.83 – August 2011
- Kaspersky Pure, \$89.99 – September 2011
- Amazon.com, \$50.00 – December 2011
- Radebaugh’s Florist, \$75.55 – December 2012
- Radebaugh’s Florist, \$139.09 – February 2013

(Hearing Officer's Decision at 20-21, attached to Motion for Summary Affirmance, Ex. 2).

It appears that the Appellant followed the notification/reimbursement procedure for some of the purchases. (*Id.* at 20). Issues arose, however, in the actual reimbursement for those charges. Specifically, the 2010 purchase of the Dropcam and payment of the Sprint Wireless bill totaled \$508. Appellant wrote check #2482 for \$508 to reimburse those charges, but BCPS did not receive it. Thus, on November 30, 2010, the Appellant wrote check #2483, but only for \$279.00 for the Dropcam. BCPS received and deposited that check, but apparently did not pursue the payment for the 2010 Sprint Wireless bill (\$229.87). (T.30-32).

In repayment for the 2011 Sprint Wireless bill, Appellant wrote a check which BCPS did not receive. (T. 36-37). It is unclear whether BCPS was eventually reimbursed. It is likewise unclear from the record whether the remaining purchases in 2011, the Kapersky Pure (\$89.00) and the Amazon gift card (\$50.00), were reimbursed. The Appellant contests the Amazon purchase. (T.50). He also testified that the Kapersky Pure purchase was BCPS-related. (T. 41-45).

For the purchase of flowers in December, 2012 (\$75.55), the Appellant wrote check #2498 in March 2013, but again BCPS did not receive the check. Thus, in April 2013, the Appellant wrote check #2400 to cover the December 2012 and February 2013 flower purchase. BCPS received and deposited that check. (T. 38-39).

Apparently, during a review in May 2013, BCPS staff identified all those above referenced charges as unauthorized. (T. 71-72). As a result, after a hearing, the Superintendent's designee terminated the Appellant. (T. 81). The Appellant appealed that decision to the local board which conducted an evidentiary hearing.

On July 30, 2014, the hearing examiner issued a recommended decision to uphold the Superintendent's decision to terminate the Appellant. The hearing examiner did not believe Appellant's testimony that each time he used the P-Card to make personal purchases it was by mistake and that BCPS must have lost three of his checks. He found that the Appellant misused BCPS funds and falsified records. The local board adopted the Hearing Examiner's Recommendation and upheld the termination.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13.A.01.05.05A.

LEGAL ANALYSIS

As a preliminary matter, the local board asserts that the appeal was not timely filed. Pursuant to regulation, an appeal must be filed within 30 days of the date of the order or opinion,

but the day of that decision does not count in computing that time period. COMAR 13A.01.05.02B. In this case, the decision of the local board was issued on September 9, 2014. An appeal should have been filed by October 9, 2014. Here, the appeal was filed on October 10, 2014.

Ordinarily, we would dismiss the appeal as untimely filed, but circumstances exist which call for a different result. Specifically, on September 10, 2014, counsel for the local board sent a letter and the Opinion and Order to Appellant's counsel advising him that an appeal "must be filed within 30 days of the date of this letter." (Response to Motion to Dismiss, Ex. A). We agree with Appellant that, in fairness, that letter created the type of extraordinary circumstances to allow the filing of this appeal on October 10, 2010, rather than October 9, 2010.

As to the merits of this case, however, the Appellant cannot prevail. It is his burden to show that the local board's decision was arbitrary or unreasonable. We defer to the hearing examiner's negative assessment of the Appellant's credibility and concerning events surrounding the purchases and payments. In our view, one mistake using the P-Card may be understandable, but seven purchasing mistakes, and three checks to reimburse for those mistakes that BCPS did not receive, raise serious concerns. We conclude that those facts are sufficient to support the termination decision and, while the result is harsh, it is not arbitrary or unreasonable.

CONCLUSION

For all the reasons stated herein, we affirm the decision of the local board.



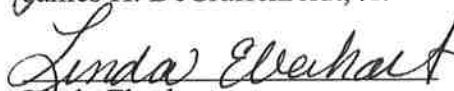
Charlene M. Dukes
President



Mary Kay Finan
Vice President



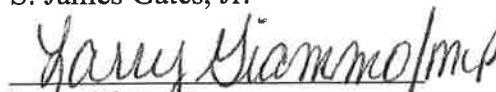
James H. DeGraffenreidt, Jr.



Linda Eberhart

Absent

S. James Gates, Jr.



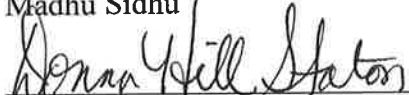
Larry Giampio


Luisa Montero-Diaz
Absent

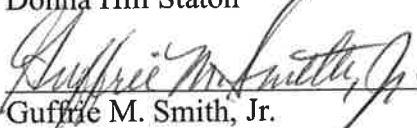
Sayed M. Naved



Madhu Sidhu


Donna Hill Staton

Donna Hill Staton


Guffie M. Smith, Jr.

January 27, 2015