

SHARON GORENSTEIN,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-06

OPINION

INTRODUCTION

Sharon Gorenstein (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) denying her request that it reimburse her \$1,267.73 in interest payments made to the Maryland State Retirement and Pension System. The local board submitted a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellant has worked as a school psychologist for Baltimore City Public Schools (BCPS) since 1992. She enrolled in the Maryland State Retirement and Pension System (MSRPS) that same year. (Appeal, Exs. A, B).

Between August 27, 2003 and June 30, 2004, Appellant took an approved, unpaid voluntary leave of absence to further her education. Late in the leave of absence period, on May 15, 2004, Appellant signed a Form 46 "Application to Be Placed on a Qualifying Approved Leave of Absence." The BCPS retirement coordinator signed the form on June 15, 2004.¹ The form contains the following language:

- (1) I understand that I may obtain credit for my employer approved leave of absence if it is for any of the reasons listed above and it does not last longer than two (2) years.
- (2) In return for the membership service credit, I agree to pay any retirement contributions which would have been due had I remained in active employment for the term of the leave of absence.

Beginning in 2008 and spanning the course of several years, Appellant made inquiries with BCPS and MSRPS about her credited months of service towards retirement. As a result of these inquiries, errors were discovered and MSRPS credited Appellant with additional months of service. (Appeal, Exs. E1-E2, F-H, K-L).

¹ Although the Appellant questioned whether this document was submitted to the State, the record shows that MSRPS had a copy of the form in its records. (Motion, Ex. 6).

On July 16, 2013, Appellant filled out a “Request to Purchase Previous Service” form with MSRPS, covering the dates of her leave of absence. The BCPS retirement coordinator verified those dates and submitted the form to MSRPS. (Motion, Ex. 3). After submitting the form, Appellant received a bill from MSRPS informing her that she was eligible to purchase nine months of service for \$1,791.62. (Motion, Ex. 4). Out of that amount, \$523.89 was the actual cost and \$1,267.73 was the accrued interest. Appellant paid the full amount of the bill. (Appeal).

On December 13, 2013, Appellant requested that BCPS pay the accrued interest portion of the bill. BCPS denied the request, stating that Appellant accepted leave with the understanding that it would be unpaid and that she bore responsibility for making retirement contributions while she was on leave. (Motion, Ex. 5).

Appellant appealed the denial and met with the manager of labor relations for BCPS to discuss the matter. By letter dated April 25, 2014, the labor relations manager acknowledged there had been errors in the years of credited service to Appellant’s retirement account, which had been addressed. He concluded, however, that those errors did not relate to Appellant’s responsibility for paying her share of retirement contributions during her leave of absence. (Motion, Ex. 1).

Appellant appealed to the local board, which referred the case to a hearing examiner. On September 3, 2014, the hearing examiner issued a recommendation in favor of BCPS. The hearing examiner issued her decision based on the documents presented by the parties without an evidentiary hearing or oral argument. The hearing examiner found that the Code of Maryland Regulations requires employees who wish to receive eligible service credit during their leaves of absence to pay their retirement contributions, as well as those of the employer, with regular interest during the leave period. *See* COMAR 22.05.01.03. The hearing examiner observed that Appellant signed Form 46 prior to the end of her leave, acknowledging this responsibility. In addition, the hearing examiner determined that Appellant was on notice that she had not received credit towards retirement for the time she was on leave because she received annual notices from MSRPS that did not credit her leave time. (Motion, Ex. 2).

On September 23, 2014, the local board adopted the hearing examiner’s recommendation. This appeal followed.

STANDARD OF REVIEW

The decision of a local board concerning a local dispute or controversy is presumed to be *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

Appellant raises several arguments in support of her appeal, which we shall address in turn.

Additional Evidence

As a preliminary matter, the local board argues that exhibits A-S offered by Appellant as part of this appeal should not be considered because they were not presented to the local board. Appellant contends that the exhibits were presented to her union representative and that she presumed they were also shared with the local board.

Despite the local board's assertion, some of these exhibits clearly were available to the local board. Appellant's Exhibits M-S are the Appellant's appeal information form, the hearing examiner's recommended decision, the Appellant's exceptions to that recommendation, and the local board's adoption of that decision. The remaining exhibits A-L are records documenting Appellant's start date with BCPS; forms she filled out requesting verification of her months of employment for retirement purposes; a request for a salary review; and multiple letters from MSRPS adding additional months to her amount of eligible service. These records generally support the assertions Appellant made in her appeal to the local board. Accordingly, we shall consider them as a part of this appeal.

Evidentiary Hearing

Appellant argues that she should have received an evidentiary hearing as part of her appeal. In support, she cites three reasons for an evidentiary hearing: (1) the hearing examiner failed to determine who was responsible for filing the Form 46; (2) the hearing examiner failed to address previous deficits in Appellant's retirement service record; (3) the hearing examiner cited to a newer version of the retirement handbook than the one that was in place during her leave of absence.

It is well settled that due process does not require a hearing on issues that do not involve a genuine dispute of material fact. *See Lessie B. v. Caroline County Bd. of Educ.*, MSBE Op. No. 11-16 (2011). In addition, the State Board has held that there is no right to an evidentiary hearing when there is no constitutional or statutory basis to provide one. *Id.* Appellant's arguments all relate to what she believes were errors or omissions in the hearing examiner's report. She has not identified a material fact in dispute that would have necessitated an evidentiary hearing.

Responsibility for Retirement Contributions

As to the merits of Appellant's claim, she argues that BCPS was negligent in not informing her of her responsibility to pay retirement contributions while she was on leave. In order to receive eligibility and creditable service for a period of absence, an employee must (1) submit a form requesting a qualifying leave of absence and (2) pay the member contributions with regular interest. COMAR 22.05.01.03. In addition, Form 46, which must be filled out as part of a leave of absence, contains the following language: "In return for the membership service credit, I agree to pay any retirement contributions which would have been due had I remained in active employment for the term of the leave of absence."

The COMAR provisions and Form 46 put Appellant on notice that she would need to pay missed retirement contributions during her leave of absence in order to gain credit for service. Although Appellant did not fill out and sign Form 46 until her leave had nearly ended, had Appellant paid her retirement contributions at that time, MSRPS would not have charged ten years' worth of interest.

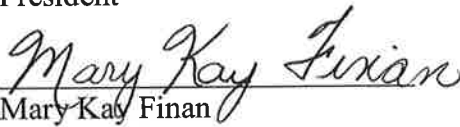
In addition to being on notice through state regulations and the form she signed, Appellant received yearly notices from MSRPS summarizing her retirement credit. On December 13, 2004, she received a letter from MSRPS indicating that she was on approved leave after September 2003. The letter reflected that her reported hours of service were much lower for that period as compared to previous years. (Appeal, Ex. D). By letter dated August 18, 2011, she received a breakdown of her creditable service by month. For 2004, she had only one creditable month of service and only three months of eligibility credit, compared to ten months for most other years. (Appeal, Ex. H). These letters provided additional notice that Appellant had not received retirement credit for the time she was away on leave.

Appellant argues that MSRPS should have billed her for her missing retirement contributions back in 2004. MSRPS, however, had no obligation to do so. Indeed, Appellant had no obligation to purchase retirement credit if she did not wish to do so. In fact, the record shows that the bill she received from MSRPS was triggered by *her request* in 2013 to purchase credit for the time she was on leave. Because she did not file a form seeking to purchase credit sooner, MSRPS would have had no reason to bill her. In short, Appellant bore the ultimate responsibility for making retirement contributions during her unpaid leave of absence; it was not unreasonable for the local board to decline to pay interest accrued because of her delay.

CONCLUSION

For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.


Charlene M. Dukes
President


Mary Kay Finan
Vice President


James H. DeGraffenreidt, Jr.


Linda Eberhart

S. James Gates, Jr.

S. James Gates, Jr.

Absent

Larry Giammo

Luisa Montero-Diaz

Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

February 24, 2015