ANTAINEZ KEENE,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS,	OF EDUCATION
Appellee.	Opinion No. 15-28

OPINION

INTRODUCTION

Antainez Keene (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) denying her request to reconsider her 2009 termination. The local board filed 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 worked for Baltimore City Public Schools (BCPS) as a paraprofessional during the 2008-09 school year. On February 2, 2009, T, a 10-year-old special education student in one of Appellant's classes became disrespectful, began using profanity, and threw a pencil at another student. Appellant escorted T to the principal's office and phoned T's mother. On the way back to the classroom, T became agitated. When T tried to re-enter the classroom, Appellant blocked her way because the student whom T had thrown the pencil at was still in the room. T tried to push past Appellant and poked Appellant. Appellant poked her back and the two began to struggle, eventually falling to the ground where T sat on top of Appellant pulling her hair. After T was pulled off of Appellant by a school therapist, Appellant kicked at T while T continued to curse and scream at Appellant. As T was being led away, Appellant attempted to strike T by reaching over the therapist's shoulder. T was taken to a local hospital where a doctor observed scratch marks on her face. Appellant reported the incident to school officials and Baltimore City police. (Appellant's Response, Ex. A).

On March 31, 2009, the Baltimore City Department of Social Services (DSS) issued a finding of "indicated" child abuse against Appellant in connection with the incident. BCPS conducted its own investigation and substantiated that finding. A pre-termination hearing was held on July 29, 2009, during which Appellant testified that she acted in self-defense. On September 16, 2009, BCPS terminated Appellant, concluding that her actions "went beyond the point of self-defense to misconduct and inappropriate contact with the student." Copies of the letter were addressed to her home and to her union. (Motion, Ex. 1). Appellant did not appeal her termination.

Separately, Appellant requested a hearing to challenge DSS's finding of indicated child abuse. An administrative law judge conducted a hearing and issued an opinion on August 10,

2009, affirming DSS's finding. Appellant appealed to the circuit court, which issued an opinion on March 5, 2010 vacating the administrative law judge's decision and remanding the case for a new hearing. (Response, Ex. A).

On August 11, 2010, a different administrative law judge conducted a new hearing. On September 22, 2010, he issued a decision in which he overturned DSS's finding. The administrative law judge concluded that Appellant acted in self-defense and that any injuries to T were accidental. Accordingly, he ordered that the finding of indicated child abuse be modified to "ruled out" and that DSS expunge any information concerning Appellant from its files. (Response, Ex. A).

In the fall of 2010, Appellant began a graduate program in school counseling at Johns Hopkins University. In 2012, she applied for and was accepted as a substitute teacher with BCPS. As part of her graduate program, she also worked as a school counseling intern at two BCPS high schools. She graduated from Johns Hopkins with a master's degree in school counseling. In May 2014, she interviewed for a school counselor position at W.E.B. DuBois High School. On August 11, 2014, BCPS informed Appellant that she was "not eligible for rehire." BCPS officials explained to Appellant that she was ineligible for the position based on her prior termination from BCPS. (Response, Ex. D).

On August 30, 2014, Appellant filed an appeal with the local board requesting that it allow her to appeal her 2009 termination. In her appeal letter, she acknowledged the request was "long overdue" but maintained that she never received her termination letter and that she would have requested an appeal had she been aware of it. (Motion, Ex. 2). The matter was referred to a hearing examiner who issued a decision on April 6, 2015, recommending that the local board dismiss the appeal as untimely because it was filed nearly five years after Appellant's termination. (Motion, Ex. 5).

On May 12, 2015, the local board adopted the hearing examiner's recommendation and dismissed Appellant's appeal as untimely. 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 argues that she was not made aware of her 2009 termination or the effect that it would have on her future employment opportunities with BCPS. She includes with her appeal several letters of recommendation attesting to her professionalism and recommending her for a position as a guidance counselor with BCPS.

Section 4-205(c)(3) of the Education Article provides that "a decision of a county superintendent may be appealed to the county board if taken in writing within 30 days after the

decision of the county superintendent." Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances, such as fraud or lack of notice of the decree. *See Gina D. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-02 (2015). The State Board has consistently dismissed appeals that were untimely filed with the local board. *Id.*

Appellant maintains that an exception to the timeliness requirement should be made because she never received a copy of her termination letter. The letter was addressed to Appellant's home address, where she still resides, and the letter indicates that a copy was also sent to the Baltimore Teacher's Union.[1]

Maryland law presumes that a "properly mailed" letter "reached its destination at the regular time and was received by the person to whom it was addressed." *Border v. Grooms*, 267 Md. 100, 104 (1972) (quoting *Kolker v. Biggs*, 203 Md. 137, 144 (1953)). Claiming not to receive a letter does not conclusively rebut the presumption, but it is evidence that a trier of fact can consider to determine whether a letter was actually mailed and received. *Id.; see also Benner v. Nationwide Mut. Ins. Co.*, 93 F.3d 1228, 1234 (4th Cir. 1996).

The hearing examiner determined in her findings of fact that the September 16, 2009 letter "was mailed to the Appellant's current address to this day." (Hearing Examiner Recommendation, at 13). The hearing examiner explains in her decision that she reviewed "the arguments and documents" presented by both parties. In reviewing the materials presented in this appeal, however, there is no indication of *how* the hearing examiner determined that the letter was actually mailed. The only evidence included in this appeal is a letter addressed to Appellant at her current address. There is no copy of the stamped envelope, a certified mail receipt, or even an affidavit affirming that termination letters were routinely mailed as part of the local board's usual business practices and the letter was not returned as undeliverable.

Maryland law first requires that a letter actually be "properly mailed" before it can be presumed that it reached its destination. In our view, the local board failed to show that it "properly mailed" the termination letter. Without evidence of that fact, under the law, the burden does not shift to Appellant to prove that she did not receive the letter.

Without evidence to support the local board's claim that the letter was mailed, we must presume that it was not. Assuming that was the case, we are left with the question of whether the local board's decision was still reasonable. In other words, was it reasonable for the local board to conclude Appellant had notice of her termination even if she did not receive the final letter informing her of that fact?

The hearing examiner relied in part on other evidence to demonstrate Appellant's awareness that she was terminated. The hearing examiner observed that Appellant participated in a pre-termination hearing and "was aware of the reason for her termination and of the termination itself insofar as she was not allowed to return to work." The hearing examiner concluded that if Appellant had truly been unaware of her termination, "at some point during the weeks after her termination hearing, she would have attempted to communicate with [BCPS] to

[1] Appellant also alleges that her union representatives did not receive a copy of the letter, but she provides no evidence for that claim.

inquire as to the final result and how she could challenge the final decision." (Hearing Examiner Decision, at 15).

In our view, the hearing examiner's conclusion, which was adopted by the local board, was not arbitrary, unreasonable, or illegal. In the nearly five years that passed after she was fired, there is no record of Appellant contacting BCPS or her union to check on the status of her termination. Even though Appellant won her appeal with DSS, there is no record of her informing BCPS of the decision or attempting to be reinstated to her job as a result. Appellant claims in one of her filings that she assumed all of her appeals had been cleared after she won her case with DSS in 2010, but she offers no reason why she would be under that assumption when BCPS never called to reinstate her. Appellant never returned to her prior position as a paraprofessional and was not paid again by BCPS until she became a substitute teacher in 2012. It was only when Appellant learned that her prior termination was a bar to permanent employment with BCPSS that she sought to challenge the 2009 decision. In short, circumstantial evidence demonstrates that Appellant was aware of her termination, and she has not shown that extraordinary circumstances excuse her untimely filing of an appeal.

CONCLUSION

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

Guffrie M. Smith, Jr.
President

Absent
S. James Gates, Jr.
Vice-President

James H. DeGraffenreidt, Jr.

Linda Eberhart

Chester E. Finn, Jr.

Absent
Larry Giammo

Michele Jenkins Guyton

Absent

Stephanie R. Iszard

Absent

Madhu Sidhu

Andrew R. Smarick

Absent

Laura Weeldreyer

August 25, 2015