

STACY MESSICK AND
STEPHANIE MOSES,

Appellant

v.

WICOMICO COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-65

OPINION

INTRODUCTION

The Appellants, Stacy Messick and Stephanie Moses, filed a Motion for Reconsideration of this Board's decision in MSBE Op. No.13-50 in which the State Board affirmed the decision of the Wicomico County Board of Education (local board) terminating both employees. The local board filed a Motion in Opposition. The Appellants responded by supplementing their original motion with new facts. The local board replied.

FACTUAL BACKGROUND

On September 24, 2013 the State Board affirmed the decision of the local board to terminate the Appellants for insubordination. *Messick and Moses v. Wicomico County Board of Education (I)*, MSBE No. 13-50 (September 24, 2013), attached hereto as Exhibit 1. The State Board, employing the *McDonnell-Douglas* paradigm, determined, *inter alia*, that "the local board proved a non-discriminatory reason for the termination" and that the Appellants "failed to present a case of pretext or retaliation" for their termination. *Id.* p. 11. The Appellants did not seek judicial review of the State Board's decision.

The Appellants now assert that there is "new evidence" which warrants reconsideration and reversal of Opinion No. 13-50. The new evidence, in great part, is a May 16, 2014 letter and an August 28, 2014 e-mail from the Equal Employment Opportunity Commission (EEOC) determining that there was reasonable cause to believe the Appellants were discharged in retaliation for filing a complaint of discrimination with the EEOC. (Motion, Ex. 1). On the basis of that finding, and other "new evidence," Appellants request, *inter alia*, that the State Board reverse the local board's decision and reinstate them with back pay.

STANDARD OF REVIEW

The decision to reconsider is in the sole discretion of the Board. An original decision may not be "disturbed" unless there is proof that the decision resulted in a mistake or error of law or new facts material to the issues have been discovered or occurred subsequent to the decision.

COMAR 13A.01.05.10

LEGAL ANALYSIS

It is the Appellants' position that a reasonable cause determination from the EEOC is dispositive on the issue of retaliatory discharge and sufficient to support an outright reversal of the local board's decision. Even as "new evidence," an EEOC determination does not carry that much weight, however.

In some courts when an EEOC finding is offered as evidence of intent to discriminate, "the finding is sufficient...to create an issue of fact" that would preclude an employee's motion for summary judgment. See *Mitchell v. Office of Los Angeles County*, 805 F.2d 844,847(9th Cir. 1986); *Stewart v Suwal*, 1991 WL 22324 (D. Ore. Feb. 20, 1991).

The Fourth Circuit, however, does not go that far. In *Goldberg v. B. Green & Co.*, 836 F.2d 845 (4th Cir. 1988), the Court held:

[T]he Commission's finding are not sufficiently probative to create a genuine issue of material fact about (the employer's) intent to discriminate.... The Commissioner's report merely repeats facts which (the plaintiff) himself alleges elsewhere in this case, and then states in conclusory fashion that those facts reflect...discrimination. Such facts, standing alone, are not enough to salvage (the plaintiff's) claim.

Id. at 848; see also, *Conkwright v. Westinghouse Elec. Corp.*; 739 F. Supp. 1006 (D. Md. 1990).

In this case, the EEOC determination amounts to no more than a recitation of the facts alleged by the Appellants. It references documents and memos and, without further explanation, concludes that reasonable cause exists to believe the Appellants were discharged in retaliation for filing a complaint. Following the Fourth Circuit's analysis, we conclude that that determination is not dispositive on the issue of retaliation and is not sufficient evidence on which to base a reconsideration.

The Appellants offer other "new evidence" - - an EEOC complaint filed by another school employee and e-mails related to the search of their computers. We do not find that evidence sufficient to support a reconsideration.

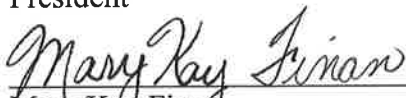
Appellants have filed suit in the federal court alleging retaliatory discharge. That court is now the proper forum in which to decide this termination case.

CONCLUSION

For the reasons stated, we deny the Motion for Reconsideration.



Charlene M. Duker
President



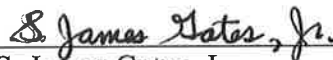
Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



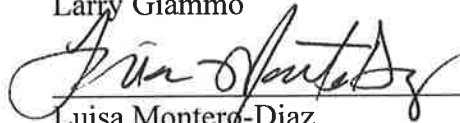
Linda Eberhart



S. James Gates, Jr.



Larry Giammo



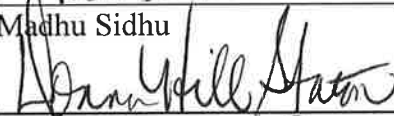
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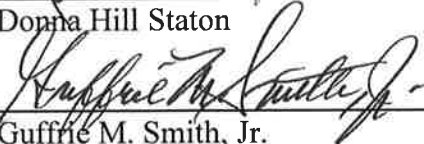
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

December 16, 2014