TIMOTHY VALENZIA

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-10

OPINION

INTRODUCTION

This case returns to the State Board on appeal after a remand. The Baltimore City Board of School Commissioners (local board) filed a response to the appeal to which Mr. Valenzia, the Appellant, responded. The local board replied.

FACTUAL BACKGROUND

On July 24, 2012, the State Board reversed and remanded this case to the local board for an explanation of the reasons for its decision to reject the Hearing Officer's recommendation to reinstate Mr. Valenzia and instead affirm Mr. Valenzia's termination. (Attached).

On August 17, 2012, the local board issued an order providing the rationale for its decision to affirm the Appellant's termination for employment. (Appeal, Ex. 1). As set forth in its order, the factual basis for finding just cause to terminate Mr. Valenzia is:

- Appellant was placed on a Performance Improvement Program (PIP) in September, 2009 by his immediate supervisor in an effort to cure his performance deficiencies. He was advised of the need to improve his performance or risk the loss of his employment with Baltimore City Public Schools.
- Appellant's performance was subsequently reviewed on three occasions between September and December 2009. He did not improve his performance.
- Appellant was reprimanded by his immediate supervisor, Mr. Teller, on or about March 29, 2010 for failing to properly supervise a project.
- Between 2007 until his termination in April, 2010, in numerous occasions Appellant:
    a. Failed to provide his superiors with updates for assigned projects in a timely manner;
    b. Failed to process work orders for ballast and lighting maintenance in a timely manner;
    c. Failed to communicate with ballast teams, contractors, supervisors and managers;

d. Failed to use the ACT system to properly document the progress of contracts assigned to him;
e. Failed to use change orders when necessary with the result that a significant number of contracts assigned to Appellant came in over budget; and
f. Failed to follow orders from his immediate supervisor to supervise jobs "on site" on at least two occasions.

(Appeal, Ex. 1 at 2-3).

Thus, the local board concluded that the Hearing Officer was incorrect when he concluded that there was no just cause for the termination.

Despite the Appellant's argument to the contrary, it is the appropriate role of the local board to consider the evidence and come to its own conclusions. The local board is not required by law to accept a recommended decision of a Hearing Officer. It can review the facts and come to a different conclusion. We agree that there were sufficient facts in the record, as set forth by the local board, to support a conclusion that just cause existed to support the termination.

In addition, the local board rejected the Hearing Officer's conclusions that progressive discipline is required before a termination can occur. Because there is no personnel rule requiring progressive discipline before termination, we agree with the local board.

The one remaining issue is whether the school system had some affirmative obligation to have ascertained that Mr. Valenzia had Attention Deficit Hyperactivity Disorder before it terminated him. We agree with the local board that it did not. As we explained in our original decision in this case, the Americans with Disabilities Act (ADA) prohibits an employer from "require[ing] a medical examination . . . [or] mak[ing] inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability unless such examination or inquiry is shown to be job-related and consistent with business necessity." *See* 42 U.S.C. §12112(d)(4)(a). Moreover, under the ADA, the employee has the responsibility to first make the request for an accommodation. *Bryant v. Better Business Bureau of Greater Md., Inc.*, 923 F. Sup. 720, 737 (D.Md.1996). Once this request has been made, the ADA requires that the employer and employee engage in an interactive process to identify a reasonable accommodation. *Id.* A fitness for duty examination might be a component of the interactive process to figure out a reasonable accommodation.

CONCLUSION

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

Charlene M. Dukes
President

Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

Absent
S. James Gates, Jr.

Luisa Montero-Diaz

Sayed M. Naved

Madhu Sidhu

Donna Hill Staton

Ivan C.A. Walks

Guffrie M. Smith, Jr.

Linda Eberhart

February 26, 2013