

SHIRLEY BAYLOR

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-11

OPINION

INTRODUCTION

In this appeal, the Appellant challenges the decision of the Baltimore City Board of School Commissioners (local board) to terminate her from her teaching position for willful neglect of duty based on her excessive lateness throughout the 2010-2011 school year. At the time of her termination, Appellant was a special education resource teacher at Matthew A. Henson Elementary School and had taught in the school system at various assignments for approximately 25 years.

As is required in certificated employee termination cases, the State Board referred this case to the Office of Administrative Hearings (OAH) for proposed findings of fact and conclusions of law by an Administrative Law Judge (ALJ). COMAR 13A.01.05.07A(2). The ALJ issued a decision proposing that the State Board uphold the termination of Appellant. Appellant filed exceptions to the ALJ's decision with the State Board. The local board responded.

STANDARD OF REVIEW

Because this appeal involves the termination of a certificated employee pursuant to §6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.05(F)(1) & (2). After considering the evidence *de novo*, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision.

FACTUAL BACKGROUND

The ALJ's proposed decision reviews the facts and circumstances underlying the termination and recommends that the State Board affirm the termination decision. (*See Proposed Decision*, pp. 5 – 7). Some of the salient facts concerning the termination are as follows:

- January 14, 2011 Mid-Year Evaluation Report in which Appellant received an "Unsatisfactory" rating in Planning and Preparation, Instruction/Instructional

Support, and Professional Responsibilities. The comments under Professional Responsibility state “Ms. Baylor must improve her attendance. Despite numerous warnings and reminders she has 58 occurrences of lateness.” In response, Appellant wrote the following on the evaluation form, “It is difficult [to] be on time for ‘foolishness’”. (BOE Ex.3).

- February 25, 2011 memorandum to Appellant from Yolanda Lambirth, Principal, advising Appellant that she had 64 occasions of lateness and that it was her responsibility to report for work at 7:45 a.m. as set forth in the contract with the Baltimore Teachers Union. The memorandum states that it “serves as an official correspondence in an attempt to assist [the Appellant] with improving [her] attendance.” It further advises the Appellant to let Ms. Lambirth know if there is any way she can provide support to help improve the attendance issue. (BOE Ex.1). Ms. Lambirth also spoke to Appellant regarding her lateness. (ALJ Tr. 19).¹
- March 14, 2011 memorandum to Appellant from Tary Scroggins, Assistant Principal, advising Appellant that she had 78 occasions of lateness and that it was her responsibility to report for work at 7:45 a.m. as set forth in the contract with the Baltimore Teachers Union. The memorandum asks Appellant to let the administration know if there is any way they can help to ensure her timely arrival at work. (BOE Ex.2). Ms. Scroggins also met with Appellant to discuss her lateness. (HE Tr.17, 21, 47).
- At a pre-termination hearing on June 6, 2011, Appellant, with her union representative present, stated that her lateness was a result of her frustration with the manner in which the administration operated the school. (BOE Ex. 9).
- Statement of Charges in which Andres A. Alonso, Chief Executive Officer, recommended termination of Appellant for willful neglect of duty based on her poor attendance record which included 119 occasions of lateness and eight occasions of absence as of May 27, 2011. (BOE Ex.9).
- Decision of Hearing Examiner, Robert Jay Kessler, recommending the local board accept the recommendation of the CEO and dismiss Appellant from her position as a special education teacher. (BOE Ex.10).
- Local board order accepting CEO’s recommendation to terminate Appellant. (BOE Ex.11).

¹ The transcript of the hearing before the local hearing examiner is referenced as HE Tr. The transcript of the hearing before the ALJ is referenced as ALJ Tr.

ANALYSIS

The local board terminated Appellant for willful neglect of duty. Willful neglect of duty is generally charged when the employee has willfully failed to discharge duties which are regarded as general teaching responsibilities. *Stewart v. Baltimore County Bd. of Educ.*, MSBE Op. No. 05-15 (2005); *Crawford v. Charles County Bd. of Educ.*, 1 Ops. MSBE 503 (1976).

The willful neglect of duty charge in this case is based on Appellant's excessive tardiness for work, totaling approximately 119 late occurrences for the 2010-2011 school year. Appellant does not deny that she was excessively late.² The ALJ concluded and we agree that Appellant's continued and excessive lateness in this case justified her termination.

Exceptions to the ALJ's Proposed Decision

Appellant has filed several exceptions to the ALJ's decision which we address below.

Appellant maintains that her termination was improper because the school system failed to follow the steps of progressive discipline as set forth in the Attendance Reliability and Analysis Program.

Employee lateness is addressed in the Reporting Time Policy section of the Attendance Reliability and Analysis Program. (BOE Ex.4). Pursuant to that policy, employees are expected to report to work promptly as scheduled. (IV). Supervisors may permit two occurrences of lateness for each recording period (half of the employee's contract year), but it is expected that an employee will not be late more than seven times during each half. (VI.B, C & D).

With regard to discipline for failure to maintain an acceptable punctuality record, the policy states that such employees may be disciplined in accordance with the following schedule: (1) oral counseling; (2) written letter; (3) suspension without pay; (4) denial of promotional opportunity (limited to a period of two years); and (5) dismissal. (VI.D). For employees who exceed more than seven late occurrences per recording period the policy states as follows:

The principal shall use discretion in these cases and may recommend a denial of promotional opportunity, or where appropriate, discipline up to and including a recommendation for dismissal, to the Officer of the Department of Human Resources. In determining if, and to what extent, discipline should be administered; the supervisor should in all cases take into account any evidence of efforts to improve punctuality and any extenuating circumstances that may be present.

² Employees at Matthew Henson are given a grace period from 7:45 until 7:51 a.m. If they sign in to work during that time they are not considered late for work. (ALJ 20). Appellant consistently arrived after the grace period.

(*Id.*). Although the language of the policy does not mandate that the progressive discipline schedule be followed, Mr. Jones testified that the general standard is for supervisors to provide oral counseling and two written letters before moving on to more serious forms of discipline. (HE Tr.91). As for discipline beyond written letter, it is within the discretion of the school system to decide what is appropriate.

Based on the record in this case, we find that the progressive discipline steps were met. Ms. Lambirth and Ms. Scroggins, as well as Mr. Jones, spoke to Appellant about her tardiness. (HE Tr. 16-17, 21, 47, 70-71; ALJ Tr.19).³ Additionally, Ms. Lambirth and Ms. Scroggins provided written notice of the need for Appellant to correct the lateness problem. (BOE Exs. 1,2, & 3). Although Appellant refused to sign the March 14 memorandum and her Mid-Year Evaluation Report (BOE Exs.2 & 3), her refusal does not negate the fact that notices were issued and reviewed with her. Despite this, Appellant continued to report late for work. The decision to terminate Appellant rather than to impose some lesser form of discipline, such as suspension without pay or denial of promotional opportunity,⁴ was a decision within the discretion of the local board. Mr. Jones testified that in view of the high level of lateness, Appellant's refusal to take responsibility, refusal to make the necessary corrections, and her refusal to accept any assistance, Appellant was beyond rehabilitation and the only appropriate action in the case was dismissal. (HE Tr.74-80). We concur given how egregious Appellants lateness was in this case, her failure to make an effort to improve her punctuality, and the fact that there was no extenuating circumstance preventing her from arriving to school on time.

In her exceptions, Appellant attempts to justify her lateness by claiming that tardiness was a part of the culture at Matthew Henson. Ms. Scroggins testified that there was a problem with employees being late to school, but that nobody had the same number of tardy occurrences as the Appellant. (ALJ Tr.33, 47). In fact, Mr. Jones testified, Appellant's punctuality problem was the worst that he had ever seen in his six years with the school system. (HE Tr.74). In our view, the fact that other employees might have also been late does not excuse the Appellant's lateness.⁵

Appellant also argues that her late arrival was not a problem because her planning time was from 7:45 to 8:15 a.m. and she was not scheduled to see students during that time. It is irrelevant that Appellant was not scheduled to see students prior to 8:15. Her work day began at

³ Throughout the hearings, the Appellant's testimony is confusing and contradictory. We agree with the local hearing examiner and the ALJ that the Appellant's testimony is not credible.

⁴ Appellant claims in her exceptions that Ms. Lambirth recommended her for a promotion rather than a denial of promotional opportunity. The document cited by the Appellant, however, is a list of schools and open positions that she thought the Appellant might want to consider pursuing. (Emp. Ex.19). It is not a recommendation that the Appellant be selected for any particular position.

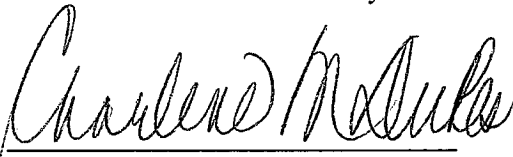
⁵ Appellant claims that as a resource teacher who supports the general education teachers, her job was dependent on the general education teachers being at school, and that it was problematic for her job when they were late. The issue in the case, however, is not the Appellant's competence in doing her job. Rather, the issue is the Appellant's tardiness.


7:45 and she was to use her time before seeing students as planning time. That time period was still part of her work day to be used to fulfill her job responsibilities.

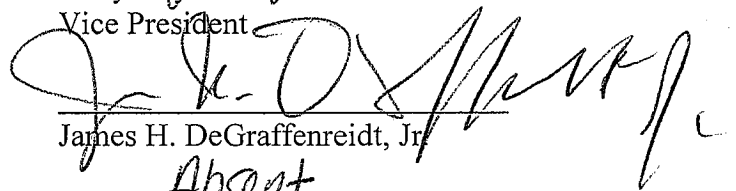
Finally, Appellant maintains that the ALJ's Proposed Decision and Order should reflect only the charge of willful neglect of duty for which she was terminated and not misconduct, willful negligence or insubordination. Given the record in this case, we find sufficient evidence that Appellant was properly charged with willful neglect of duty based on her excessive lateness and appropriately terminated on that basis. Thus there is no reason to consider the other charges referenced by the ALJ in the Proposed Decision and Order.

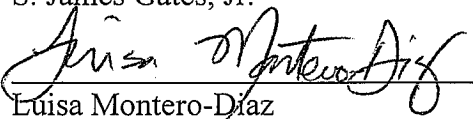
CONCLUSION

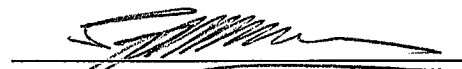
After hearing oral argument on the Exceptions, we find that the Baltimore City Board of School Commissioners has shown by a preponderance of the evidence that the Appellant willfully neglected her duties and that her termination was proper. Accordingly, we adopt the ALJ's Proposed Decision with the modification that the termination is based only on the charge of willful neglect of duty.

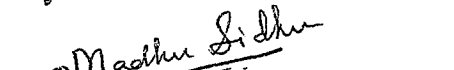

Charlene M. Dukes
President

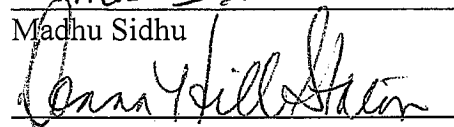

Mary Kay Finan
Vice President

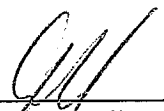

James H. DeGraffenreidt, Jr.
Absent

S. James Gates, Jr.

Luisa Montero-Diaz

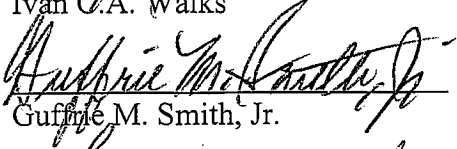

Sayed M. Naved


Madhu Sidhu


Donna Hill Staton



Ivan C.A. Walks



Guffie M. Smith, Jr.



Linda Eberhart

February 26, 2013