

ADORACION YABOT,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR11-14

ORDER

In this appeal, the Appellant challenges the decision of the Prince George's County Board of Education (local board) to terminate her for incompetency, insubordination and willful neglect of duty.

We transferred this case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings for a hearing before an Administrative Law Judge (ALJ). The local board filed a Motion to Dismiss the appeal maintaining that it was not filed within the 30 day time frame for taking an appeal to the State Board. The Appellant did not respond to the local board's Motion.


The ALJ issued a decision proposing that the State Board grant the local board's Motion to Dismiss because the appeal was not filed within the 30 day time frame for taking an appeal to the State Board. The local board had issued its decision terminating Appellant on March 16, 2011, but Appellant did not take an appeal to the State Board until July 27, 2011, as evidenced by the postmark date on the envelope sent by certified mail. The appeal should have been taken on or before April 15, 2011. As we have stated, 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 Scott v. Board of Educ. of Prince George's County*, 3 Ops. MSBE 139 (1983). Appellant has not presented any reason for the late filing.

Therefore, on this 6th day of December, 2011, we adopt the Administrative Law Judge's Proposed Ruling on Motion and

ORDER that the appeal referenced above be and the same is hereby dismissed. *See* COMAR 13A.01.05.03C(1)(e).

MARYLAND STATE BOARD OF EDUCATION

By:


James H. DeGraffenreidt, Jr.
President

ADORACION YABOT,

APPELLANT

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION

RESPONDENT

* BEFORE MARINA L. SABETT,
* ADMINISTRATIVE LAW JUDGE,
* MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: MSDE-BE-01-11-35157

* * * * *

PROPOSED RULING ON MOTION

STATEMENT OF THE CASE
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CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On May 13, 2010, Dr. Adoracion Yabot (Appellant) was notified that D. William R. Hite, Jr., Superintendent of Schools, Prince George's County Public Schools (PGCPS), recommended that she be terminated from her employment with PGCPS for incompetence, insubordination and/or willful neglect of duty. The Appellant appealed to the Prince George's County Board of Education (Respondent or Local Board). The matter was referred to Lynda Earle-Hill, Hearing Examiner. A hearing was held before Ms. Earle-Hill on September 15, 2010 and ,on December 14, 2010, Ms. Earle-Hill recommended that the Superintendent's proposed termination be upheld. The Appellant waived the oral argument scheduled by the Local Board to address the hearing Examiner's December 14, 2010 recommendation; instead, the Appellant requested that the Local Board base its decision on the established record. On March 16, 2011, the Local Board accepted the Superintendent's recommendation to terminate the Appellant based on incompetence,

insubordination and willful neglect and ordered the Appellant's termination. The Appellant appealed to the Maryland State Department of Education (MSDE) on July 28, 2011.

On September 13, 2011, MSDE referred the case to the Office of Administrative Hearings (OAH) for proposed findings of fact, conclusions of law and recommendations. On the same date, the Respondent filed a Motion to Dismiss Appeal with OAH, on the basis that the appeal was untimely filed by the Appellant. Although a Certificate of Service indicates that a copy of the Motion to Dismiss was mailed to the Appellant on September 7, 2011, the Appellant has yet to respond to the Motion and clearly did not do so within 15 days of the Motion being filed with the OAH. COMAR 28.02.01.12B(3)(a). Consequently, I determined that no hearing was necessary to rule on the Motion. COMAR 28.02.01.12B(5).

The contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); Code of Maryland Regulations (COMAR) 13A.01.05, 28.02.01.

ISSUE

Should the Appellant's appeal of the Local Board's decision be dismissed as untimely?

SUMMARY OF THE EVIDENCE

Exhibits

The Local Board's Motion to Dismiss was accompanied by the following exhibits, which I considered in making my ruling:

LB # 1 August 3, 2011 Memorandum from Jackie Fiandra, MSDE Assistant Attorney General, to Dr. William R. Hite and Roger Thomas, Esquire acknowledging receipt of Appellant's appeal postmarked on July 27, 2011 and received by the MSDE via certified mail on July 28, 2011, enclosing copy of appeal and transmittal envelope.

LB # 2 March 16, 2011 Order of the Local Board upholding the Superintendent's recommendation to terminate the Appellant from employment with PGCPS.

LB # 3 September 15, 2010 Transcript of the Appellant's hearing before a hearing officer.

LB # 4 December 13, 2010 Hearing Examiner's Findings of Facts and Recommendations as a result of the Appellant's September 15, 2010 hearing.

LB # 5 April 4, 2011 letter from Daniel Cronin, Acting District Director of the Wage and Hour Division, U.S. Dept. of Labor, to Synthia Shilling, Esquire, Chief Human Resources Officer, PGCPS.

The Appellant did not submit any response to the Motion to Dismiss.

FINDINGS OF FACT

I find the following by a preponderance of the evidence:

1. On March 16, 2011, the Local Board rendered an Order terminating the Appellant's employment with the PGCPS.
2. The March 16, 2011 Order also notified the Appellant that she could appeal such Order so long as she did so within thirty days of the date of such Order.
3. There were no other orders or opinions terminating the Appellant's employment with the PGCPS subsequent to the March 16, 2011 Order.
4. The Appellant sent a letter dated June 28, 2011 via certified mail to the MSDE, appealing her termination from PGCPS employment. The letter of appeal was postmarked July 27, 2011 and received by the MSDE on July 28, 2011.

DISCUSSION

In a case transferred by MSDE to OAH, hearing procedures are in accordance with the Administrative Procedure Act and the OAH's Rules of Procedure, except as otherwise provided by

MSDE regulations. COMAR 13A.01.05.07D. MSDE regulations do not contain procedures for motions; accordingly, the OAH Rules of Procedure apply. OAH Rules of Procedure set out the following provisions regarding Motions to Dismiss:

C. Motion to Dismiss. Upon motion, the judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

COMAR 28.02.01.12C.

An administrative law judge considering a Motion to Dismiss may review the “initial pleading,” defined under COMAR 28.02.01.02B(7) as “a notice of agency action, an appeal of an agency action, or any other request for a hearing by a person.” From a review of the notices of agency action in this case and the Appellant’s appeal of the agency action, the Appellant failed to file an appeal of the Local Board’s termination Order within the required thirty day timeframe.¹ I conclude, therefore, that the appeal is untimely and should be dismissed.

Under the applicable MSDE regulations, an appeal of a local board action must be taken within 30 calendar days:

B. Deadlines

(1) Appeals.

(a) An appeal shall be taken within 30 calendar days of the decision of the local board or other individual or entity which issued the decision on appeal.

(b) The 30 days shall run from the later of the date of the order or the opinion reflecting the decision.

(2) The day of the decision of the local board may not be included in computing any period of time prescribed by these regulations.

¹ Although the Local Board submitted exhibits beyond the notice of agency action and appeal, the other exhibits submitted were intended to provide legal guidance or otherwise describe what is already contained on the face of the notice of agency action or appeal as well as any reasonable inferences that can be drawn therefrom. Accordingly, the motion will be considered as a motion to dismiss and not as one for summary judgment. *See Hogan v. the Maryland State Dental Ass’n*, 155 Md. App. 556, 561, 843 A.2d 902, 904 (2004).

(3) An appeal shall be deemed to have been transmitted within the 30 day period of time permitted under §B(1) of this regulation if, before the expiration of the time, it has been:

(a) Delivered to the State Board; or

(b) Deposited in the United States mail, as registered or certified mail.

(4) The last day of the period of time prescribed by this chapter shall be included, unless it is a Saturday, Sunday, or a State legal holiday, in which event the period ends on the next day which is not a Saturday, Sunday, or State legal holiday.

(5) Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, 3 days shall be added to the prescribed period.

C. Acknowledgment. The State Board shall promptly acknowledge receipt of the appeal in writing and send a copy of an appeal involving a local school system to the local superintendent.

COMAR 13A.01.05.02B and C.

In the instant case, the Appellant transmitted an appeal of her termination by letter to the MSDE via certified mail dated July 27, 2011 that was received by the MSDE on July 28, 2011, over one hundred and thirty days after the March 16, 2011 Order terminating her employment. Given that the Appellant appealed the order terminating her employment over one hundred days after the deadline, such appeal is untimely. COMAR 13A.01.05.02B. Accordingly, the Local Department's Motion to Dismiss the appeal should be granted. COMAR 13A.01.05.03C(1)(e).

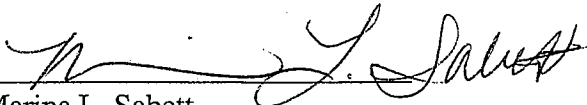
CONCLUSIONS OF LAW

I conclude that the Appellant's appeal of the Local Board's March 16, 2011 Order terminating her employment is untimely and, therefore, fails to state a claim upon which can be granted. COMAR 13A.01.05.02B, 28.02.01.12C.

PROPOSED ORDER

I **PROPOSE** that the Prince George's County Board of Education's Motion to Dismiss be **GRANTED** and that the Appellant's appeal be **DISMISSED**.

October 24, 2011
Date Decision Mailed


Marina L. Sabett
Administrative Law Judge

MLS/lh
127246

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this Proposed Decision has the right to file written objections within fifteen days of receipt of the decision; parties may file written responses to the objections within fifteen days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

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