

DIANE WILKINS,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-09

OPINION

INTRODUCTION

Appellant Diane Wilkins challenges the decision of the Prince George's County Board of Education ("local board") upholding her termination as a Human Resources Assistant. The local board filed a brief maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant filed a Response to the brief and the local board replied.¹

FACTUAL BACKGROUND

On November 2, 2011, Appellant was terminated from her position as a Human Resources Assistant in the Payroll and Benefits Services office of Prince George's County Public Schools because of her role in an October 4, 2011 fight with another employee, T.H. (Sup. Ex. 8). Appellant had no previous disciplinary reports and her performance reviews were generally satisfactory. (Sup. Ex. 2).

A little more than a month before the fight, Appellant attended a meeting where another employee (not involved in the fight) made racially-derogatory remarks about her. (Appeal Ex. 2). Appellant first filed a complaint with the employee compliance office and later with the Maryland Commission on Civil Rights and the Equal Employment Opportunity Commission. (*Id.*). Appellant believes that the action taken against her in this case was in retaliation for her making a discrimination complaint.

According to the facts as relied upon by the local board, Appellant met with her supervisor in the supervisor's office on October 4, 2011. Another employee, T.H., entered the office and words were exchanged between Appellant and T.H. At one point, T.H. told Appellant she would talk with her later, and put her hand in front of Appellant. Appellant told T.H. she could "deal with her now." The supervisor saw Appellant remove her shoes. The two employees started fighting and did not stop when told to do so by the supervisor. The supervisor was injured trying to break up the fight. Afterwards, Appellant stated, "I bet she won't put her hand in anyone else's face again." (Local board decision).

¹ Appellant requests a hearing before the State Board in this case. The State Board may decide an appeal on the record without a hearing or oral argument. COMAR 13A.01.05.06.B. We shall do so here.

After the altercation, Ernest Young, an investigator for the Employee and Labor Relations Office, began an investigation. He took written statements from employees and conducted interviews, including one of Appellant. In his report, Young noted that Appellant “admitted to willingly participating in the physical altercation and using aggressive force against” T.H. (Sup. Ex. 2). Dr. Dennis Hirsch, the Director of Payroll and Benefits Services, recommended that Appellant be terminated. (Sup. Ex. 7). After reviewing the results of Young’s investigation, James R. Whattam, Director of Employee and Labor Relations, terminated Appellant, concluding she “inappropriately engaged in a physical altercation with another employee in the workplace” and contributed to the disruption of the office. He concluded her behavior violated the Prince George’s County Public Schools Regulations for Supporting Personnel under Disciplinary Action Section VI (A) (incompetence or unsatisfactory job performance); (H) (violation of administrative regulations); and (K) (conduct that reflects unfavorably on the school system). (Sup. Ex. 8).

Appellant challenged her termination and a hearing took place on April 17, 2012, before a Hearing Examiner for the Prince George’s County Board of Education. Seven witnesses, including Appellant, testified at the hearing and more than a dozen exhibits were introduced into evidence. (Hearing Examiner’s Decision). Before the Hearing Examiner, Appellant claimed she acted in self-defense during the fight after being pushed in the face by T.H. She alleged that her termination was in retaliation for her filing a complaint with the Maryland Commission on Civil Rights and the EEOC. (Appeal Ex. 2). Appellant claimed that Dr. Hirsch, the Director of Payroll Benefits, suggested that she should accept an apology rather than file an EEOC complaint against the employee. (Appeal Ex. 3). She alleged Dr. Hirsch was visibly upset that she filed the EEOC complaint and that he used the fight as a pretext to fire her in retaliation.² (Appeal).

In a decision issued July 17, 2012, the Hearing Examiner recommended that Appellant’s termination for misconduct be upheld. Although the Hearing Examiner concluded that T.H. instigated the fight, he found that Appellant’s actions exacerbated the situation. (Hearing Examiner Decision at 14). The Hearing Examiner noted that, when T.H. told Appellant she would talk with her later, Appellant told T.H. she could “deal with her now.” He also credited the supervisor’s testimony that Appellant removed her shoes prior to the fight and threw T.H. towards the office door. (*Id.* at 15). The Hearing Examiner concluded that Appellant was a willing participant in the fight and that she did not attempt to diffuse the situation. (*Id.*). The Hearing Examiner found no connection between Appellant’s filing a claim with the EEOC and her termination, concluding that she was not fired in retaliation. (*Id.* at 16).

Dr. William R. Hite, then-Superintendent of Schools for Prince George’s County, adopted the hearing officer’s recommendation on July 23, 2012. The Prince George’s County Board of Education upheld the decision as not arbitrary, unreasonable, or illegal on December 6, 2012. In its decision, the local board noted that Appellant had been a willing participant in the

² After Appellant was terminated, she filed a separate retaliation claim with the EEOC against Dr. Hirsch.

fight and that her actions, in exchanging words with T.H., undercut her self-defense argument.³ (Local board decision). As part of its decision, the local board stated the following:

The record shows that both [Appellant] and the other employee were willing participants in the altercation and neither employee chose to follow the request of the Supervisor to stop. Furthermore, there is no dispute that the altercation occurred and was disruptive and that both [Appellant] and the other employee were disciplined for their conduct, negating [Appellant's] assertion of retaliation.

(*Id.*)

STANDARD OF REVIEW

A non-certificated support employee is entitled to administrative review of a termination under Md. Code, § 4-205(c)(3) of the Education Article. *See Jones v. Prince George's County Bd. of Ed.*, MSBE Op. No. 12-21 (2012). The local board's decision is presumed to be *prima facie* correct. COMAR 13A.01.05.05A; *see Jones, supra*. 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. *Id.* The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D

LEGAL ANALYSIS

Appellant raises two main arguments in support of her claim that the local board's decision was unreasonable and illegal. First, she argues that, because she acted in self-defense during the fight, it was unreasonable for the local board to terminate her. Second, Appellant maintains that the board's decision was illegal because she was fired in retaliation for reporting a claim to the EEOC when other steps short of her termination could have been taken.

Self-defense

Appellant claims that T.H. struck her first and that she began to fight with T.H. only to keep her from attacking her further. The facts, as found by the Hearing Examiner and accepted by the Superintendent of Schools and the local board, indicate that Appellant was a willing participant in the fight and did not obey her supervisor's demand to stop fighting. The Hearing Examiner found that Appellant escalated the encounter and appeared to prepare for the confrontation by removing her shoes. We have reviewed the record and concur that the evidence supports the factual findings relied upon by the local board. Appellant did not deny being in the fight, she made comments that escalated the encounter (telling T.H. to "deal with her now"), she did not stop fighting when told to do so, and she made a comment afterwards ("I bet she won't put her hand in anyone else's face again") that showed willingness on her part to fight. Those

³ The board refers briefly to an incident that preceded the fight. The record shows that T.H. complained to the supervisor about Appellant's use of profanity in the office. Appellant was aware that T.H. had made a complaint about her at the time the fight occurred.

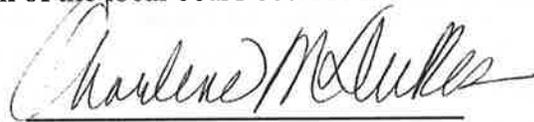
findings support the conclusion that the Appellant committed misconduct by engaging in a fight with another employee.⁴

Retaliation

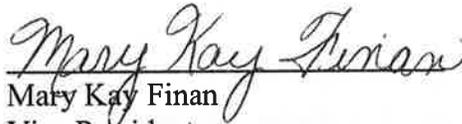
Appellant claims that her termination was a result of her filing a discrimination complaint. In support of this allegation, she states that Dr. Hirsch, who recommended her termination, was upset that she filed the EEOC complaint. The Hearing Examiner found no evidentiary support for Appellant's contention. In reviewing the record, we note that the EEOC complaint was made against an employee who was not involved in the fight and did not have the power to terminate Appellant. The decision to terminate Appellant came from James R. Whattam, Director of Employee and Labor Relations, upon the recommendation of Dr. Hirsch. As noted above, there was evidentiary support for this decision. The State Board has consistently held that an Appellant must support allegations of illegality with factual evidence. *See Breedon v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-34 (2008). "Unsupported statements or conclusions are insufficient." *Id.* Appellant has failed to present evidence linking her filing of an EEOC complaint to the decision to terminate her as a result of her role in an office fight. Given the lack of evidence to conclude that Dr. Hirsch made his recommendation to fire Appellant based on a desire to retaliate, the Appellant's claim of discrimination has no merit.

CONCLUSION

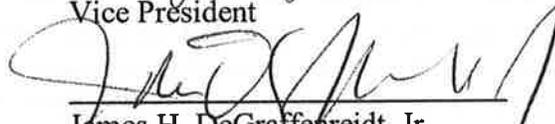
For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.



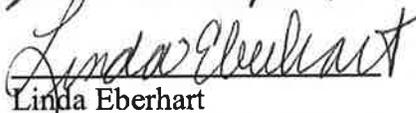
Charlene M. Dukes
President



Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



Linda Eberhart

⁴ On appeal, Appellant refers us to a January 11, 2012, Unemployment Insurance Appeals Decision. (Appeal Ex. 5). This decision was not presented before the local board and therefore we will not consider it as part of this appeal. *See Lessie B. v. Caroline County Bd. of Educ.*, No. 11-16 (2011) ("The State Board has consistently declined to address issues that were not reviewed by the local board.").

Absent

S. James Gates, Jr.

Absent

Larry Giammo

Absent

Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

February 25, 2014

