TIMOTHY VALENZIA

Appellant

v.

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-26

OPINION

INTRODUCTION

Mr. Valenzia, the Appellant, appealed the decision of the Baltimore City Board of School Commissioners (local board) to terminate him from his job in the Contract Maintenance Department. The local board filed a Motion for Summary Affirmance. The Appellant filed a Response in Opposition to that Motion.

FACTUAL BACKGROUND

The Appellant was terminated on April 26, 2010 for repeated failures to meet performance expectations. (Ex. 1 attached to Motion). The local board's Hearing Officer conducted a full day hearing on November 9, 2011. In his decision, the Hearing Officer recounted the testimony of all the witnesses. Suffice it to say, there was much testimony to support a conclusion that Mr. Valenzia had problems performing his duties. For example, Mr. Louis Teller, Project Manager and Mr. Valenzia's supervisor, testified that the Appellant came under Mr. Teller's supervision in 2007 as a result of a significant number of cost overruns in the contracts that the Appellant supervised. In 2009, Mr. Teller evaluated Appellant's job performance and found it to be substandard. Appellant failed to use the Act System correctly and effectively. His contracts were not completed in a timely fashion. The contracts Mr. Valenzia handled often came in substantially over budget as a result of his lack of supervision of contractors and his failure to use change orders when a change in the scope of work necessitated a renegotiation of the original contract price. (H.O. Decision at 3).

In February 2009, Mr. Teller assigned the Appellant to an in-house lighting maintenance job, a less stressful job and one that did not require the Appellant to interact with private contractors. Later, however, given the workload in the Contracts Maintenance Department, the Appellant was moved back to his old position. In August 2009, the Appellant was assigned to supervise a scoreboard installation contract. Questions arose as to the legitimacy of the time

sheets submitted by the contractor. Mr. Teller met with the Appellant on site and directed him to log in daily the number of contractor employees on the job and the hours worked by those employees. The contractor submitted a payment invoice in November which was $4000 over the estimated cost of the contract. In an effort to determine whether the contractor had actually earned the labor cost for which he billed, Mr. Teller asked the Appellant for his log of contractor hours, but the Appellant could not produce a log. Without the log, Mr. Teller could not dispute the contractor's demand for labor costs. (H.O. Decision at 4-5).

With all these performance issues, Mr. Teller noticed cognitive deficits in the Appellant's behavior. Between 2007 and 2009 the Appellant showed a pattern of forgetfulness that affected his job performance. He would often slip into a coma-like state. Mr. Teller was aware that the Appellant suffered from diabetes and attributed the forgetfulness, the coma states and the inability to complete tasks to the Appellant's diabetic condition. The Appellant never asked for any sort of accommodation, however. (H.O. Decision at 3-4).

On November 3, 2009, Mr. Teller wrote in his PIP appraisal of the Appellant:

> While Mr. Valenzia has expressed his desire to improve and has appeared to be eager to improve, improvement has not been made. There is much confusion when trying to communicate with Mr. Valenzia. It is difficult to understand exactly what he is trying to communicate to me. When I try to communicate on how something should be handled there does not appear to be comprehension or memory of certain conversations. After several years of a project supervision position, certain elements do not change even if protocols/procedures do. Mr. Valenzia does not appear to retain any memory on what he should already know how to do. This does not in any way appear to be intentional or willful. The confusion, lack of focus, lack of memory and lack of ability to multi-task appears to be incapability to do this job or the appearance of confusion and inability to comprehend that Mr. Valenzia exhibits. Possible evaluation for fitness for duty.

Mr. Teller did not refer Appellant for a fitness for duty evaluation, however. (H.O. Decision at 5-6).

On December 2, 2009, Mr. Teller discovered that the Appellant had not dealt with an electrical emergency. He told his supervisor in an e-mail, "There is (sic) still time management issues, memory recall issues, no paperwork or documentation, confusion on direction, and lack of clear concise answers when asked for updates. I cannot assign work to Tim as the responsibility for the work falls on me. I can't rely on Tim to do the work correctly or on time. He is not capable of doing contract supervision. Recommend re-assignment or termination. Please advise on next steps." (H.O. Decision at 6).

Finally, on March 25, 2010, Dr. Alonso learned that the Appellant had been directed to get a heater in a classroom fixed in December 2009. The classroom teacher contacted Dr. Alonso in March because the heater had not been fixed. The Appellant had failed to request approval of the contractor's proposed bid to perform the work. Mr. Teller and his superiors up the management chain all received reprimands for the Appellant's failure to follow through on the work order. Fourteen days later, the notice of the Appellant's proposed termination was issued. (H.O. Decision at 6).

The Hearing Officer also heard testimony from witnesses on behalf of the Appellant. His former supervisor testified that Mr. Valenzia was a competent employee when he supervised him from 2001-2005.

Mr. Valenzia testified about his problems with focus and memory. He saw his primary care physician and a neurologist in October/November 2009, but they were not able to diagnose the source of the problem. He was referred to a psychologist for neurophysciatric testing and evaluation. It was not until shortly after he was terminated in April 2010 that he was diagnosed with ADHD and began to receive medical treatment. (H.O. Decision at 8-9).

On January 25, 2011, his doctor submitted a report stating:

> . . . I have treated him for Attention Deficit Hyperactivity Disorder (ADHD), a condition that he has had since childhood and which affects your (sic) ability to stay on task, remember instructions, organize and plan activities. . .In addition, Mr. Valenzia has suffered from cognitive disorder, likely the result a several small strokes in recent years. This made it harder for him to compensate for his baseline ADHD and has therefore been more forgetful. However, with medication treatment for ADHD, his ability to focus and stay on task has improved significantly, and he has been much better about remembering things and keeping himself organized. It is therefore my recommendation that Mr. Valenzia be reconsidered once again for a position in the Baltimore City Public Schools Department of Contract Maintenance.

(H.O. Decision at 9).

That report was submitted into evidence.

On December 1, 2011, the Hearing Officer issued his decision. The Hearing Officer found that the Appellant had not received progressive discipline but was terminated outright for poor job performance which, the Hearing Officer concluded, was a result of ADHD, "a treatable medical condition that would have been diagnosed had [the Appellant] been referred for a fitness for duty evaluation." (H.O. Decision at 12). He concluded that the Appellant was not terminated for "just cause." He recommended reinstatement without back pay.

On January 10, 2012, the local board voted to reject the Hearing Officer's recommendation. The only reason given for rejecting the Hearing Officer's Decision was "based on facts of the case and the exceptions filed." (Appeal, Ex. 1). This appeal ensued.

STANDARD OF REVIEW

Because this appeal involves a decision of a local board concerning a local controversy or dispute, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

ANALYSIS

In this case, as reviewers of the local board's decision, we apply a standard of review that presumes the correctness of the local board's decision. In order for the local board to rely on that presumption, however, we have in the past expressed our view that the local board must explain the reasoning behind decision. *Mohan G. v. Montgomery County Bd. of Educ.,* MSDE Op. No. 08-15 (2008). In that case we said:

> The role of the State board is to determine whether the local board's decision was arbitrary, unreasonable or illegal. A decision is arbitrary if "a reasoning mind could not have reasonably reached the conclusion the local board or superintendent reached." COMAR 13A.01.05.05(B)(2). In order to make this assessment, the State Board must understand how the conclusion was reached. The State Board cannot perform its quasi-judicial function without understanding the basis for the local board's decision.

Id. at 7.

It is particularly important for us to be able to understand the local board's rationale when the local board rejects a Hearing Officer's recommendation. In this case, the sole reason the local board gave for rejecting the Hearing Officer's decision was "based on the facts of the case and the exceptions filed."

Courts have held, and we have reiterated, that it is inappropriate for an administrative body to rest its decision on "broad conclusory statements." *See id.; Bucktail, LCC v. County Council of Talbot County,* 352 Md. 530, 553-54 (1999). Rejecting a hearing officer's decision, in part, "based on the facts of the case" is just such a conclusory statement. It is unhelpful in our decision making because we are essentially called on "to *read* the record, *speculate* upon the portions which probably were believed by the board, *guess* at the conclusions drawn from credited portions, *construct a basis* for decision, and *try to determine* whether a decision thus arrived at should be sustained." *Bucktail, LLC v. County Council of Talbot County,* 352 Md. at 556 citing *Gough v. Board of Zoning Appeals,* 21 Md. App. 697, 702 (1974)(emphasis court's)(quoting 3 R.M. Anderson, *American Law of Zoning* §16.41, at 242 (1968)); *see also Ocean Hideaway Condominium Ass'n v. Boardwalk Plaza Venture,* 68 Md. App. at 662 (1986).

Thus, we turn to "the exceptions filed" reasoning. We find the same kind of problem in the conclusory citing of the "exceptions filed."

The exceptions that were filed argue that the Hearing Officer made a determination that the school system had a legal duty and responsibility to send Mr. Valenzia for a fitness for duty evaluation. (Exceptions at 2). In essence, the exceptions seem to assert that the Hearing Officer's decision was based on a mistake of law.[1] If that were the basis of the Hearing Officer's decision, we would agree.

In our view the hearing officer did not base his decision on a mistake of law. Based on the facts, he found that the termination was wrong because it did not flow from progressive discipline. The hearing officer said:

> "Corrective action at City Schools is progressive. That is, the action taken in response to a rule infraction or violation of standards typically follows a pattern increasing in seriousness until the infraction or violation is corrected or such action requires discipline." Guidebook for Working at Baltimore City Schools, 10.17 (Union 1).
>
> Corrective action in Grievant's case was anything but progressive. Instead it went from one extreme to the other. Mr. Teller candidly testified that he likes Grievant and that he did what he could do to protect Grievant's employment with the City Schools. He went so far as to "hide" Grievant in a position well beneath Grievant's job description processing lighting maintenance requests when it became clear to him that Grievant was not capable of supervising contracts. Mr. Teller went so far as to take on Grievant's work personally rather than discipline Grievant for poor job performance. When forced by his superiors to return Grievant to responsibilities commensurate with his job description, Mr. Teller placed Grievant in a Performance Improvement Program in an attempt to save Grievant's job. Grievant was never formally disciplined until the "heater plug" incident which resulted in

[1] The American's 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. Supp. 720, 737 (D. Md. 1996). Once the request has been made, the ADA requires that the employer and employees 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.

> reprimands to Mr. Teller and his supervisors from Dr. Alonso. Within fourteen days of that incident, the Grievant found himself subject not to the progressive discipline but the ultimate discipline: termination.

(H.O. Decision at 11).

He concluded that Mr. Valenzia's termination did not meet the "just cause" standard even though Mr. Valenzia's performance was poor. He found that poor performance was a result of ADHD. *Id.* at 12.

The "exceptions filed" state that Mr. Valenzia exhibited no "physical signs" that might lead to fitness for duty examination. (Exceptions at 4). The exceptions also contain a brief argument addressing the poor performance issue. It states:

> Mr. Valenzia's inability to perform his work satisfactorily is the entire basis for the decision to terminate his employment. City Schools, at the time, was without other information which would leave (sic) the employer to believe that there was any other reason for the employee's poor performance. The employee has a known medical history of diabetes for which City School assisted in providing treatment through by paying the larger portion of the premium for healthcare insurance.

(Exceptions at 2).

The record, however, contains statements about what the school system staff knew about Mr. Valenzia's medical condition. The school system certainly had some information about reasons for Mr. Valenzia's poor performance. The record certainly shows that Mr. Valenzia exhibited physical manifestations of an illness.

Because we do not know what argument or arguments in the exceptions convinced the local board and because it is not appropriate for us to *read* the exceptions, *speculate* on which arguments were persuasive to the board, *guess* at the conclusion the board drew from arguments and *determine* whether the board's decision thus was reasonable, we must reverse and remand this case to the local board. The board's conclusory statements that they relied on "the facts of the case and the exceptions filed" to reverse the Hearing Officer's decision provide an insufficient basis on which to presume the correctness of the local board's decision.

CONCLUSION

The local board's decision is arbitrary based on its failure to provide its reasoning for reversing the Hearing Officer's decision and upholding the termination. Accordingly, we reverse and remand this case to the local board for an explanation within 60 days of the reasons

for its decision. If the local board fails to issue a new decision within 60 days, the Hearing Officer's decision shall take effect.

James H. DeGraffenreidt, Jr.
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July 24, 2012