

RICHARD PHILLIPS

Appellant

v.

ALLEGANY COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR08-09

ORDER OF DISMISSAL

Appellant was employed as a teacher with the Allegany County Board of Education (local board). On September 14, 2006, the superintendent advised Appellant that he was recommending his dismissal for misconduct in office, insubordination, and willful neglect of duty. (AuMiller Letter). Appellant appealed the recommendation to the local board. (Gallagher letter, 10/24/06). The local board conducted an evidentiary hearing on the recommendation for dismissal on November 14, 2006. The local board found Appellant guilty of insubordination, willful neglect of duty and misconduct in office, and dismissed Appellant from his employment with the school system.

Appellant appealed the local board's decision to the State Board. Because the appeal involved the termination of a certificated employee, the State Board referred the case to the Office of Administrative Hearings (OAH) for an evidentiary hearing before an Administrative Law Judge (ALJ). COMAR 13A.01.05.07.

OAH mailed a Notice of Prehearing Conference (Notice) to Appellant by certified and regular mail advising him that a telephone Prehearing Conference would convene at 9:30 a.m. on May 8, 2007. The Notice also advised Appellant that he must file a Prehearing Conference Statement and provide a telephone number at least five calendar days prior to the telephone conference. The Notice further advised that failure to participate or give timely notice of the inability to participate in the Prehearing Conference might result in the issuance of a decision adverse to that party. (Notice). Appellant signed the return receipt as received on April 5, 2007. (Certified Mail Return Receipt).

The Appellant failed to submit the required information as ordered in the Notice of Prehearing Conference.

The Prehearing Conference convened as scheduled. The local board's attorney, G. Gary Hanna, participated. Appellant did not participate as the ALJ was unable to contact Appellant by telephone.¹ Appellant did not contact OAH.

¹Although Appellant did not provide his phone number, Mr. Hanna provided the ALJ with the telephone number that the local board had on record.

On May 11, 2007, the ALJ issued a Proposed Default Order, proposing that Appellant be found in default, that all proceedings be terminated and that a disposition of dismissal be entered against Appellant. (Proposed Default Order, p. 2).

STANDARD OF REVIEW

This case involves an ALJ's proposed default order issued because the Appellant failed to appear at the Prehearing Conference. Such an order is "reviewable in accordance with the delegating agency's regulations governing review of proposed decisions." COMAR 28.02.01.20C. The standard of review the State Board applies to proposed default orders is the "good cause standard", the same standard used by the OAH to determine whether a final default order should be overturned. *Abron v. Prince George's County Board of Education*, MSBE Opinion No. 06-32; *See* COMAR 28.02.01.20B(1) ("On motion filed within 30 days after the date of a final default order, the judge may, for good cause, vacate or modify the final default order and set the case in for further proceedings as appropriate."). Good cause is a test "of ordinary prudence, that is, whether the claimant prosecuted his claim with that degree of diligence that an ordinary prudent person would have exercised under the same or similar circumstances." *Madore v. Balt. County*, 34 Md. App. 340, 345 (1976).

ANALYSIS

Despite having received the notice of Pre-Hearing Conference from OAH, Appellant did not provide a Prehearing Conference Statement or a telephone number, nor did he contact OAH regarding the Prehearing Conference. Appellant failed to appear at the conference and the ALJ rightfully issued a proposed default order.

Appellant did not file a motion to vacate the ALJ's Proposed Default Order, thereby failing to demonstrate good cause to vacate the proposed default order.

CONCLUSION

For these reasons, the State Board adopts the ALJ's Proposed Default Order. Finding Appellant in default, it is this 24th day of June, 2008, by the Maryland State Board of Education,

ORDERED, that the appeal referenced above be and the same is hereby dismissed .

MARYLAND STATE BOARD OF EDUCATION

By:



Dunbar Brooks
President

RICHARD W. PHILLIPS
v.
BOARD OF EDUCATION FOR
ALLEGANY COUNTY, MARYLAND

* BEFORE RICHARD F. ROTHENBURG,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No MSDE-BE-01-07-10903

* * * * *

PROPOSED DEFAULT ORDER

On October 18, 2006, the Superintendent of Schools for Allegany County (“SOS”) notified Richard W. Phillips (“Appellant”) that he had made a recommendation for his dismissal as a teacher for misconduct in office, insubordination, and willful neglect of duty in accordance with Title 6, Section 202 of the Education Article of the Annotated Code of Maryland. On or about October 24, 2006, the Appellant filed an appeal of the recommendation to the Allegany County Board of Education (BE). On November 14, 2006, the BE held a hearing on the recommendation for the dismissal. The BE found the Appellant guilty of insubordination, willful neglect of duty and misconduct in office. The BE upheld the SOS’ recommendation and dismissed the Appellant as a teacher in the Allegany County School System. On January 12, 2007, the Appellant appealed this decision.

In accordance with the Code of Maryland Regulations (“COMAR”) 13A.12.05.04, the matter was transferred to the Office of Administrative Hearings (“OAH”) for scheduling of a hearing.

Notice of a telephone pre-hearing conference with detailed instructions was mailed to the Appellant by the OAH by both certified and regular mail. The Notice stated that a telephone pre-hearing conference was scheduled for Tuesday, May 8, 2007, at 9:30 a.m. The Notice further

advised that failure to participate or give timely notice of the inability to participate might result in the issuance of a decision adverse to that party.

The certified mail notice was signed as received by the Appellant on April 5, 2007. No requests for postponement were received prior to the date of the telephone pre-hearing conference.

The Appellant did not submit the required information as ordered in the pre-hearing conference instructions and the Appellant did not provide his telephone number. Counsel for the Board of Education provided his telephone number.

A telephone pre-hearing conference was initiated by Administrative Law Judge ("ALJ") Richard F. Rothenburg of the OAH on May 8, 2007, at 9:30 a.m. The Attorney for the Allegany County Board of Education, Mr. G. Gary Hannah, Esq., participated in the pre-hearing conference. The ALJ was unable to contact the Appellant telephonically since he did not provide a telephone number so he could participate in the telephone prehearing conference. The attorney for the Allegany County Board of Education moved that the Appellant be held in default.

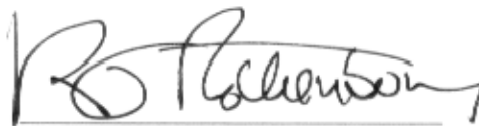
THEREFORE, it is **PROPOSED** as follows:

1. Richard W. Phillips is found in **DEFAULT**; and
2. All further proceedings in the captioned matter are **TERMINATED**, and a disposition of **DISMISSAL** is entered in this case; and
3. Accordingly, Richard W. Phillips, or his representative, may file with the State Superintendent of Schools, a written motion to modify or vacate this **Default Order** within twenty (20) days. Any such motion must state the grounds for the request to modify or vacate the Default Order. If good cause is not shown to excuse the default, the **Default Order** will be upheld. COMAR 28.02.01.20.

4. The decision of the Allegany County Board of Education to dismiss the Appellant is upheld.

May 11, 2007
Date Decision Mailed

RFR/cm
#88924



Richard F. Rothenburg,
Administrative Law Judge

MAILING LIST

Richard Phillips
103 Washington Street
Apt. 3B
Cumberland, MD 21502

Richard Phillips
Rt. 1, Box 28L
Wiley Ford, WV 26766

Richard Phillips
P.O. Box 604
Frostburg, MD 21532

G. Gary Hanna, Esquire
71 Prospect Square
Cumberland, MD 21502

Towanda P. Santiago, Administrative Officer
Office of the Attorney General
Maryland State Department of Education
200 Saint Paul Place, 19th Floor
Baltimore, MD 21202