

JENNIFER MATTHEWS,

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-02

### OPINION

#### INTRODUCTION

Jennifer Matthews, a school bus driver, appealed the decision of the Prince George's County Board of Education (local board) to terminate her employment. The local board filed a Motion for Summary Affirmance. Ms. Matthews filed a Response to which the local board Replied.

#### FACTUAL BACKGROUND

Ms. Matthews was a school bus driver for about ten years. On January 14, 2008, after doing two morning runs, she was randomly selected for blood alcohol-content (BAC) testing. Using a breathalyser, Mr. Everett Edmond, a Bus Supervisor, administered three BAC tests. On each of the three tests the BAC level was at or above .07%. For bus drivers, the BAC level cannot exceed .02%. COMAR 13A.06.07.10(B)(2)(a). Mr. Edmond immediately pulled Ms. Matthews from her route for the day and referred the BAC results to Michael Dobson, Director of Transportation.

Because school bus drivers with a BAC level over .02% must, by law, be decertified, (COMAR 13A.06.07.10(B)(1)), Mr. Dobson prepared the decertification paperwork and recommended that Ms. Matthews be terminated.

Ms. Matthews appealed the termination and received a full evidentiary hearing. The Hearing Officer concluded that the termination was appropriate. The Superintendent adopted the Hearing Officer's Finding of Fact and Conclusions of Law. Ms. Matthews appealed to the local board which upheld the Superintendent's decision. This appeal ensued.

## STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, 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.01.05.03E(1).

## LEGAL ANALYSIS

In her Response to the local board's Motion, Ms. Matthews outlines the reasons she believes the local board's decision was arbitrary, unreasonable or illegal: (1) the local board violated its own procedures and policies; (2) there was no evidence to corroborate certain testimony at the hearing; (3) the BAC machine malfunctioned; (4) the BAC results were caused by Robitussin; not alcohol and she was functioning well. We address each assertion *seriatim*.

### *Procedures and Policies Violated?*

First, Ms. Matthews asserts that, Mr. Everett Edmond, was not "allowed" to administer BAC tests. Under federal regulations, the immediate supervisor of a particular employee may not administer the BAC. 49 CFR §40.211(c). The testimony is clear, however, that Mr. Edmond was not Ms. Matthews' immediate supervisor. (T.18; T.144-145).

Second, Ms. Matthews claims that Mr. Edmond did not prove at the hearing that he was certified to administer the BAC test. At the administrative hearing, Mr. Edmond testified under oath that he was certified to conduct the testing on January 14, 2008. (T. 67). On cross-examination, counsel for the Appellant called into question whether the certification of Mr. Edmond was current at the time of the testing involving the Appellant. Although the certificate presented as Administration Exhibit 7 at the administrative hearing post-dated the testing, the Hearing Officer specifically determined that she had no reason to doubt Mr. Edmond's testimony that he was, in fact, certified at the time of the January 14, 2008, testing. Because we give great deference to credibility determinations of the trier of fact, we conclude that Mr. Edmond was certified at the time of the testing.

Finally, Ms. Matthews asserts that when Michael Geris, the Foreman of the bus lot, entered the room during the third BAC test, that too violated policy. *See* Response ¶ 6. Under federal regulations, "unauthorized personnel" must not be allowed to witness the test. 49 CFR §40.223(3)(b). There is no evidence or testimony in the record, however, that Mr. Geris was present for the third test. Therefore, there is no factual basis for the assertion.

*Uncorroborated Testimony?*

Ms. Matthews challenges the testimony of Michael Dodson about statements Ms. Matthews allegedly made about having a few drinks the night before. Those alleged statements and Mr. Dodson's testimony about them, in our view, are irrelevant. The BAC results speak for themselves and are dispositive of blood alcohol content.

*Test Machine Malfunction?*

Ms. Matthews asserts that the BAC results are not reliable because the BAC machine failed to print out the 2<sup>nd</sup> test result; the time on the machine was not accurate, and the print-outs were not numbered consecutively.

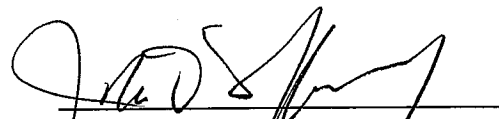
It is correct that the BAC machine showed the incorrect time and failed to print out the results of the 2<sup>nd</sup> test. There is nothing in the testimony of the hearing that establishes that those problems would invalidate the test results. There was testimony, however, that the machine was calibrated correctly during the time of the testing. (T. 34-37; T. 77-81). The record does not establish that the test results were unreliable.

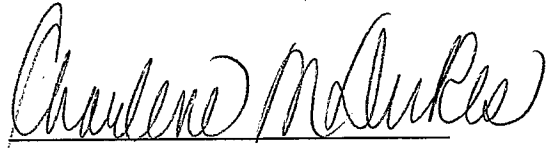
*Robitussin v. Alcohol?*

Ms. Matthews testified that she was taking Robitussin for a cold and that was the reason for the BAC test results. Ms. Matthews' blood alcohol level was almost four times greater than the acceptable limit of .02. She should not have been driving a school bus. The law prescribes the penalties that ensue from such test results. It matters not what the source of the alcohol was. The local board followed the law and had good reason, as a result, to terminate her from her job.

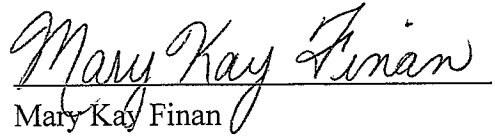
CONCLUSION

For all of these reasons, we affirm the decision of the local board.

  
James H. DeGraffenreidt, Jr.  
President



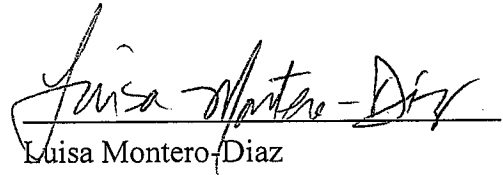
Charlene M. Dukes  
Vice President



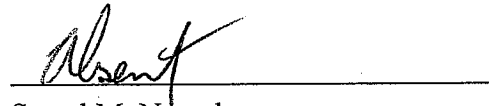
Mary Kay Finan



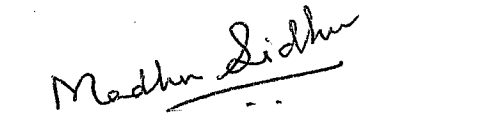
S. James Gates, Jr.



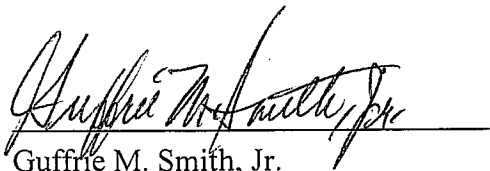
Luisa Montero-Diaz



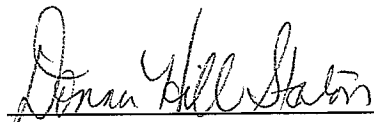
Sayed M. Naved



Madhu Sidhu



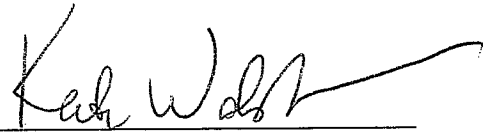
Guffie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

January 25, 2011