

DANIEL TOWNSEND

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-16

OPINION

INTRODUCTION

Daniel Townsend, the former Director of Food and Nutrition Services for Prince George's County Public Schools ("PGCPS"), appeals the decision of the Prince George's County Board of Education (local board) denying him benefits under the Sick Leave Bank rules. The local board filed a Motion for summary Affirmance to which the Appellant has filed an Opposition. The local board filed a Response.

FACTUAL BACKGROUND

Appellant began his employment as the Director of Food and Nutrition Services for PGCPS in 2004. In early 2010, Appellant began experiencing significant health issues. (*See* Appeal, Exh. No. 1). On July 27, 2010, PGCPS received an e-mail from him that stated:

Dr. says I'll be out a minimum of 3 months. With that as the starting point, in good conscience, I cannot expect the Board, other than treating me fairly and equitably with current benefit package, to hold my position and operate in limbo and uncertainty about my return. I will not return to work for PGCPS. I will access my benefit package during my illness or return to work elsewhere when abated....I'll finish the report I have for you (90% complete) on eliminating deficits. I'll provide Joan transition information and support as needed. (*See*, Appeal, Exh. No. 2).

Appellant provided PGCPS with a Recommendations Report for Food and Nutrition Services on August 16, 2010. (*Id.* Exh. No. 2). In the monthly report, Appellant was listed as an "Employee currently in Acting Capacity". (*See*, the Local Board's Response to Appeal and Motion for Summary Affirmance Exh. No. 3).

On October 7, 2010, the Chief Human Resources Officer for PGCPs, Ms. Synthia Shilling, sent a letter to the Appellant noting that on October 22, 2010, he would have been absent on sick leave for twelve weeks. She explained that PGCPs considered him separated from service as of that date. She informed him that he would be paid for any earned, but unused, annual leave. (*See* the Local Board's Response to Appeal and Motion for Summary Affirmance, Exh. No. 3 and 4).

On November 29, 2010, Appellant sent an e-mail noting that he had contributed to the Sick Leave Bank. He believed his condition should qualify him for the Sick Leave Bank benefit. (*Id.* Exh. No. 5). Appellant said in the e-mail that he did not want to be separated from service in order to permit his eligibility for Sick Leave Bank benefits.

Several weeks later the Director of Human Resources Operations sent Appellant a letter informing him that he was not eligible for the Sick Leave Bank since it was understood that he would not be returning to work. She noted that effective November 20, 2010, he would then be considered separated from service with PGCPs. (Motion, Exh. No. 6).

On January 4, 2011 and January 7, 2011, Ms. Shilling e-mailed Appellant to inform him that sick leave is generally not an end of employment benefit. She stated that, in exchange for resolving the dispute on the denial of the Sick Leave Bank benefit, she would be willing to exercise the Superintendent's discretion to allow Appellant to run out his personal sick leave, (not the Sick Leave Bank benefit). This would get him paid through January 5, 2011. (Motion, Exh. No. 9). Thereafter he would be separated from service. (*Id.*)

Subsequently, on January 7, 2011 Appellant sent the Superintendent a request to hear his appeal pursuant to Section 4-205 of the Education Article regarding the administration's position that he had been separated from service due to resignation. (Motion, Exh. No. 11).

On January 14, 2011, the Superintendent responded to the request by stating that the administration properly treated the July 26, 2010 e-mail as a resignation and that Appellant was provided all rights and benefits to which he was entitled. The Superintendent noted that "ordinarily, when a school system employee resigns from employment, accumulated sick leave is lost, except for any value it may have in providing additional creditable service in Maryland State Requirement and Pension System. Exiting employees - even those exiting for health reasons - do not have a right to exhaust accumulated sick leave as an 'end of employment' benefit. However, in order to considerate of his needs, the Superintendent allowed the Appellant to continue to use his accumulated sick leave". (Motion, Exh. No. 11). Appellant appealed the Superintendent's decision to the local board.

On September 7, 2011, the local board issued its decision. It reversed the Superintendent's decision that the Appellant had resigned as of July 26, 2010.¹ The local board

¹ It should be noted that the correct date on the e-mail is July 27, 2010. *See* Local Board's Response To Appeal and Motion for summary Affirmance Exh. No. 1).

held that the Appellant's official separation from employment date was December 3, 2010 because on that date he "was still unable to work and his position was filled by a replacement." (Motion, Exh. No. 5). The local board pointed out that the Appellant had full benefit of medical coverage, leave benefits, and payment of wages during most of the time period between July 27 and December 3. It awarded him 49 days of retroactive paid leave. (Motion, Exh. 5).

The only issue on which the Appellant did not prevail was his request to participate in the Sick Leave Bank. The local board ruled that the Superintendent's decision to deny the Appellant participation in the Sick Leave Bank was neither arbitrary, unreasonable, or illegal.

After the local board issued its decision, this appeal to the State Board ensued.

STANDARD OF REVIEW

This case involves a dispute about whether the local board's decision to deny Appellant's request to participate in the Sick Leave Bank benefit was lawful. On this issue, the local board's decision is considered *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the Appellant meets his burden to show that the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05 A.

LEGAL ANALYSIS

The sole issue in this case is whether the local board correctly decided that the Appellant had no right to Sick Leave Bank Benefits.

According to the Executive, Supervisory and Confidential employees Sick Leave Bank Rules, the Sick Leave Bank is a voluntary bank grant program where contributors are permitted to use Sick Leave Bank in order to be paid for days when qualifying incapacitating personal illness occurs during regularly scheduled duty days. (*See* the local board's Response to Appeal and Motion for Summary Affirmance, Exh. No. 6 at ¶ No. 1). To be eligible to participate in the Sick Leave Bank benefit an employee must have used all accumulated sick and annual leave and must be on active duty (*Id.* at ¶ No.1 and No. 9).

The local board ruled that the Appellant was not entitled to that Sick Leave Bank benefit because he was not on active duty. It ruled that active duty, in this case, is based on an employee's intent to return to work. (Motion, Exh. 5). We find that to be a reasonable definition of "active duty."

On July 27, 2010, Appellant unequivocally stated his intention to not return to work for PGCPs. He was able to remain on the payroll records and continued to receive salary and/or leave and medical benefits until December 3, 2010. The local board recognized December 3, 2010 as the official date of Appellant's separation from service because on that date he was still unable to work, he had exhausted his leave, and his position was filled by a replacement. (*See* the

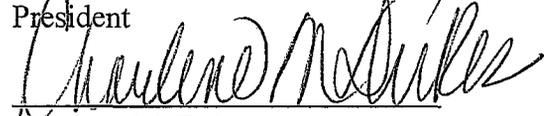
local board's Response to Appeal and Motion for Summary Affirmance, Exh. No. 5). His intent not to return to work thus came to fruition on that date.

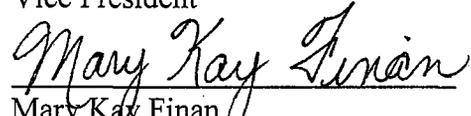
Therefore, under the rules governing the Sick Leave Bank, Appellant was not on active duty and thus not eligible to participate.

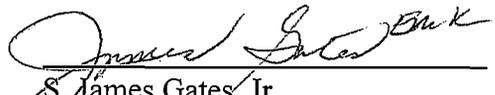
CONCLUSION

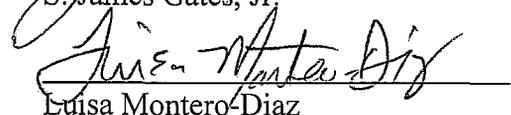
For these reasons, we affirm the decision of the local board.

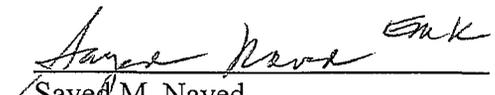

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President

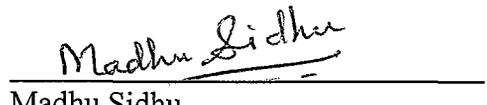

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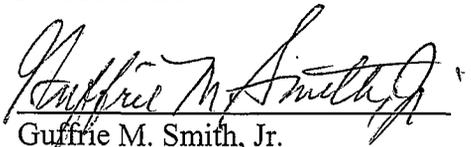

Mary Kay Finan

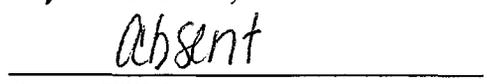

S. James Gates, Jr.


Luisa Montero-Diaz


Sayed M. Naved

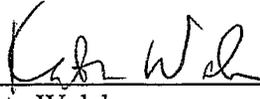

Madhu Sidhu


Guffrie M. Smith, Jr.


Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

May 22, 2012