

PATRICK TAGUE

Appellant

v.

CHARLES COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-32

OPINION

INTRODUCTION

The Appellant appealed the local board's decision to terminate his employment. The local board filed a Motion to Dismiss or for Summary Affirmance. The Appellant, representing himself, filed a Response to this Motion. The local board filed a reply.

FACTUAL BACKGROUND

The Appellant was employed as a Supervisor of Food Service with the Charles County Public Schools (CCPS). In June 2010, the County received complaints from two employees who were under the Appellant's supervision. These complaints alleged that the Appellant sexually harassed the two employees, including inappropriate touching. Appellant denied the allegations. He was placed on administrative leave pending the outcome of an investigation commenced by the County as a result of the complaints.

The investigation consisted of interviews of the two complainants and others. After the month-long investigation, the Appellant was returned to active employment at his original location, where he continued to supervise one of the original complainants. (Appeal, September 7, 2011). On November 15, 2010, the CCPS received additional complaints of sexual harassment from one of the two employees. (Unemployment Insurance Appeals Decision, August 30, 2011). Appellant was suspended soon thereafter and was terminated on December 6, 2010.

Appellant appealed his termination to the local board. A full evidentiary hearing was scheduled for June 21, 2011. Both Appellant and his attorney received notice of this hearing through regular and certified mail. His attorney received notice of the hearing on April 7, 2011. The Appellant returned the certified letter unsigned and unopened. However, the letter sent via regular mail was not returned and the presumption is, therefore, that he received notice of the hearing.

On June 17, 2011, Appellant's attorney emailed the hearing officer to request a postponement, stating a concern that the hearing could prejudice possible defenses in the civil suit filed against the Appellant. (Letter from Mr. Pazulski, June 17, 2011). The local board opposed the request for a postponement. It asserted that the hearing date had already been postponed, and that the June 21 date was scheduled to accommodate the schedule of Appellant's criminal case. The local board also asserted that the Appellant's request constituted a request for an indefinite postponement, which is unreasonable. The hearing examiner denied the postponement request on those grounds. Neither the Appellant nor his attorney attended the hearing. The hearing examiner recommended to the local board that the appeal be dismissed with prejudice in light of the fact that the Appellant did not appear at the hearing.

The recommendation to dismiss the appeal was sent to the local board and to Appellant's attorney. It included notice of Appellant's right to request oral argument before the board concerning the recommendation. (Hearing Examiner's Statement, July 5, 2011). The board did not receive such a request and concluded that based on this and his failure to appear, the Appellant did not intend to pursue the appeal. It stated that since the Appellant had the burden of proof in such a matter, that there was no reason to overturn Appellant's termination.

STANDARD OF REVIEW

Because this appeal involved a decision of the local board involving 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.01.05.05A.

LEGAL ANALYSIS

The issue in this case is whether the local board acted arbitrarily, unreasonably, or illegally when it dismissed Mr. Tague's appeal. Here, the local board's decision to dismiss the appeal was based on the Appellant's failure to appear. Failure to appear is a reasonable and legally appropriate basis on which to dismiss the appeal. *See Pagano v. Howard County Bd. of Educ.*, MSBE Op. No. 99-4 (1999).

CONCLUSION

Based on the review of the record and for the reasons noted above, we affirm the decision of the local board.



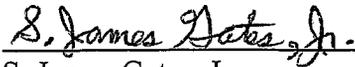
Charlene M. Dukes
President



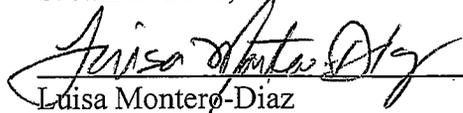
Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



S. James Gates, Jr.



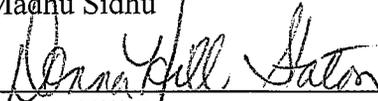
Luisa Montero-Diaz



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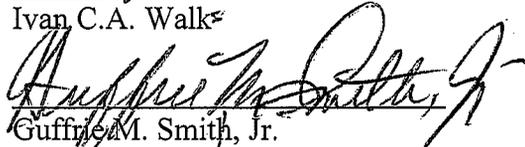
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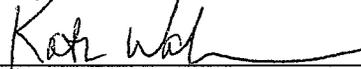
Donna Hill Staton



Ivan C.A. Walk



Guffrey M. Smith, Jr.



Kate Walsh

August 28, 2012