

TRILISA COLLIER-SIMS

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-01

OPINION

INTRODUCTION

The Appellant appeals the decision of the Baltimore City Board of School Commissioners (local board) to terminate her position as a School Police Communications Officer. The local board filed a Motion for Summary Affirmance. The Appellant filed a Motion in Opposition to Summary Affirmance and the local board responded to the Opposition.

FACTUAL BACKGROUND

From August 15, 2005, until the time of her termination effective January 16, 2011, Appellant had been employed as a School Police Communications Officer.

The following timeline illustrates the events in this case.

March 31, 2010	Knee injury occurs at work and Appellant returns to work.
August 24, 2010	Knee surgery performed. Appellant on accident/injury leave.
September 20, 2010	Appellant files Workers Compensation Claim.
October 28, 2010	Appellant released to return to work on November 4, 2010.
November 1, 2010	Surveillance begins. (T.63)
November 5, 2010	Surveillance. (T.63)
November 8, 2010	Appellant returns to work.
November 10, 2010	Knee re-injured, unable to work; accident/injury leave. (T.62)
November 12, 2010	Surveillance.
November 17, 2010	Surveillance.
November 18, 2010	Surveillance.
November 19, 2010	Still unable to work.
November 29, 2010	Surveillance.

December 3, 2010	Still unable to work.
December 8, 2010	Surveillance.
December 17, 2010	Scheduled to return to work; applies for leave.
December 20, 2010 – January 3, 2011	On leave.
January 4, 2011	E-mail between school staff and Key Risk.
January 5, 2011	Appellant receives notice of pre-termination hearing.
January 12, 2011	Pre-termination hearing held.
January 13, 2011	Notice of termination for “fraudulent receipt of Workers Compensation.”
March 30, 2011	Appellant granted Unemployment Compensation.
June 6, 2011	Termination appeal hearing conducted.
July 28, 2011	Hearing Examiner recommends affirming termination.
August 23, 2011	Local Board adopts Hearing Examiner’s recommendation.
September 29, 2011	Workers Compensation hearing held.
February 29, 2012	Local Board issues Final Order to terminate Appellant.
March 30, 2012	This appeal filed.

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.

LEGAL ANALYSIS

In her appeal to this Board, the Appellant presents one issue for review: whether the action of the local board to terminate her employment was illegal. Pursuant to COMAR 13A.01.05.05A. A decision may be illegal if it is one or more of the following:

- (1) Unconstitutional;
- (2) Exceeds the statutory authority or jurisdiction of the local board;
- (3) Misconstrues the law;
- (4) Results from an unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law.

The Appellant contends that there is no factual support in the record that she fraudulently received Workers Compensation benefits. Her contention arises because the letter of January 13, 2011 from Dr. Alonso terminating Appellant’s employment gave the reason for termination as

“fraudulent receipt of Workers Compensation benefits.” (Appeal, Ex. 1). The facts asserted to support that charge were:

You have been employee as a School Police Communications Officer, in School Police Administration since August 15, 2005. On March 3, 2010 you reported to your Supervisor that you were injured at work (right knee) and requested to go to Mercy Medical for treatment of your injury. You were treated, placed on status of unable to work and given a follow-up appointment. Subsequently you were scheduled for knee surgery on August 24, 2010; on November 3, 2010 you were released to return to work and you returned on November 8, 2010 with restrictions of no prolonged walking/standing and the ability to elevate your leg as needed with continuing physical therapy. You state that you were still experiencing some locking of your knee and could not walk without the assistance of a cane or crutch. An investigation was conducted by Key Risk Management regarding the legitimacy of your workers compensation claim. The investigation consisted of video surveillance of your activities on November 1, 2010 and November 5, 2010. The investigation captured footage of you involved in the following activities:¹

- Standing, bending over laying tile.
- Standing and walking without the use of assistive device(s).

On Wednesday, January 12, 2011 a pre-termination hearing was scheduled to afford you an opportunity to state your objections to City Schools’ intent to terminate your employment for fraudulent receipt of Workers Compensation benefits. In attendance at this hearing were you, Patrice Johnson, Local 44 Field Representative, Marshall Goodwin, Police Chief; Jerome Jones, Labor Manager representing management during this hearing you offered no valid justification for your actions on the surveillance video. Whereas, I believe your termination is appropriate.

Ms. Collier-Simms appealed that termination decision. The hearing examiner who heard the appeal noted that fraudulent receipt of Workers Compensation was the “grounds for termination, based on the CEO’s letter . . .” (Appeal, Ex. 2). Yet, it is clear from the record of that hearing and from the hearing officer’s decision that on appeal a different basis for termination emerged. After considering all the evidence the hearing examiner concluded that Appellant “engaged in fraud in order to personally benefit herself financially....” (Appeal, Ex. 2

¹ We note here that there is testimony in the record that the November 1 and November 5 surveillance dates are wrong. (T.49). There are other statements in the record that they are correct dates. (T.63).

at 7). The hearing examiner defined fraud as “an intentional perversion of the truth for the purpose of inducing another to part with some valuable thing. It is also a false representative of a fact by words or conduct to obtain an unjust advantage (*Black’s Law Dictionary*); fraud is also defined as ‘a deception deliberately practiced in order to secure unfair or unlawful gain’”, (*The American Heritage Dictionary*). (*Id.* at 7).

The hearing officer explained that, in her opinion, fraud occurred because “Appellant intentionally misrepresented her physical state in order to be off duty and receive 100% of her salary.” (*Id.* at 8).

In considering this appeal, we first consider burdens of proof. It is the Appellant’s burden to prove that the local board’s decision was illegal.

It is clear to us that Appellant has shown that there is no factual basis in the record to support a charge of fraudulent receipt of Workers Compensation benefits. If that were the only issue we needed to review, we would reverse the decision of the local board. The local board did not, however, attempt to prove fraudulent receipt of Workers Compensation benefits. Instead, it shifted its case to the misrepresentation of the extent of injury to fraudulently receive accident/injury leave. On that issue, the hearing examiner found that the school system met its burden of proof by a preponderance of the evidence. Yet, the Unemployment Compensation Commission ruled to the contrary several months before. There may be good reason for the contrary rulings contained in the record, but neither party explains the reasons.

We point out to the parties that the record and the filings in this case are confusing and deficient. The Appellant’s filings are conclusory at best, and, therefore, we would be inclined to dismiss this appeal for failure to meet her burden to show that the local board’s decision was illegal. We have serious questions, however, about whether the school system met its burden below to establish “fraud.” Specifically, the record before us does not contain any decision or order granting Workers Compensation benefits. Moreover, the transcript contains confusing testimony about workers compensation and accident/injury leave, each of which is a different benefit. (*See* Tr. 50, 56-57, 67, 76). It is impossible to ascertain which benefit Ms. Collier-Simms received, how much she was paid, or for how long. The explanation of the surveillance and what it proved is also confusing. In addition, there is no medical testimony in the record about what Ms. Collier-Simms should or should not have been capable of doing. With such a record, we cannot conduct a meaningful review of this appeal., *See, e.g., Florida Power and Light v. Lorion*, 470 U.S. 729, 744 (1985) (when agency has not considered all relevant factors or has provided insufficient explanation of its action on remand is appropriate).

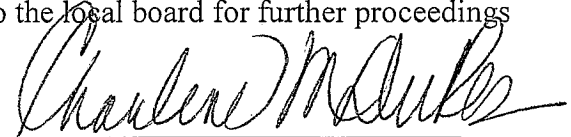
Therefore, we are remanding this case to the local board for a re-hearing on the charge of “fraud to personally benefit herself financially.” If this case returns to us on appeal, we expect the record to include a full and clear explanation of:

- (1) the benefits the Appellant received, whether Workers Compensation or accident/injury leave or both, the amount of benefits and when they were paid;

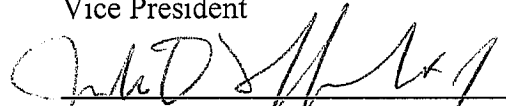
- (2) the decisions of the Workers Compensation Commission and the Unemployment Commission and whether they are relevant or instructive in deciding this appeal;
- (3) an accurate and detailed timeline of the surveillance conducted; what was observed at each surveillance and the length of each surveillance;
- (4) if appropriate, medical testimony that establishes that the activities observed should or should not have been within the Appellant's ability, given her injury. To this end, we are most interested in the surveillance after the second injury - - from November 12 to December 8, 2010.


CONCLUSION

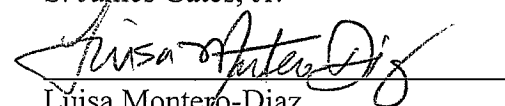
For all these reasons, we remand this case to the local board for further proceedings consistent with this decision.

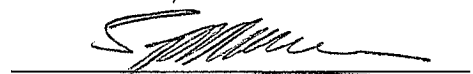

Charlene M. Dukes
President

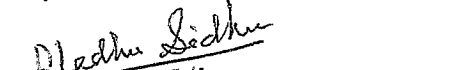
absent
Mary Kay Finan
Vice President


James H. DeGraffenreidt, Jr.


S. James Gates, Jr.



Luisa Montero-Diaz


Sayed M. Naved


Madhu Sidhu


Donna Hill Staton


Ivan C.A. Walks


Guffie M. Smith, Jr.

Kate Walsh*

January 22, 2013

* Ms. Walsh's term expired on June 30, 2012. She served as a Board Member until her successor was appointed on January 4, 2013.