

WARDELL HARMON,

Appellant

v.

BALTIMORE CITY  
BOARD OF SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-14

### OPINION

Appellant, a tenured teacher at Harbor City High School in Baltimore City, contests his termination for misconduct in office and willful neglect of duty based on falsification of forms that he submitted to substantiate bereavement leave allegedly to attend five funerals of family members.

Following a full evidentiary hearing, the local board affirmed the hearing examiner's recommendation and upheld the termination decision. Appellant appealed the local board's decision to the State Board and the matter was transferred to the Office of Administrative Hearings where a review hearing was conducted by an Administrative Law Judge (ALJ).<sup>1</sup> The parties agreed to submit the case based upon the documents and testimony taken below. The ALJ recommended upholding the termination for willful neglect of duty and misconduct in office, concluding that Appellant was dishonest when he falsified the funeral home documents which he submitted as proof of his absence from school for bereavement leave. A copy of the ALJ's proposed decision is attached as Exhibit 1.

Appellant filed an objection to the ALJ's recommended decision maintaining that he did not receive proper notice of his dismissal and the local board decision. The ALJ rejected that contention, stating as follows:

Regarding the issue of whether the Appellant received proper notices, his argument on that matter was vague. At first, he argued that he only received verbal, not written notice of his dismissal. However, in his testimony below, he conceded that he did receive a letter, wherein the Chief Executive Office of the New Board of Commissioners of Baltimore City informed him that she was recommending the Appellant's dismissal. Tr. of Hearing December 18, 2002, p.62; See also, CEO-X-5, Hearing December 18, 2002. Later in his argument before me, it seemed as though he was claiming that he never received the final Order of the Board

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<sup>1</sup>Although Appellant was represented by counsel during the proceedings before the local board, Appellant has represented himself throughout the State Board appeal.

that affirmed his dismissal. Contrarily, there was a receipt of mailing of the order to Keith Zimmerman, Esq., the Appellant's counsel below, and there was no evidence of non-receipt of that mailing. I conclude after review of the record below, that the Appellant received both the recommendation for dismissal and the order affirming the recommendation of the Hearing Examiner.

ALJ Decision at 10. We also note that Appellant was sufficiently aware of his dismissal to appeal it and receive full review of his termination at both the local and the State levels. In any event, any procedural errors that may have occurred before the local board have been cured on appeal to the State Board based on its *de novo* review of the case. See *Williamson v. Board of Education of Anne Arundel County*, 7 Op. MSBE 649 (1997) (failure to give prompt notice would be cured by local board's full evidentiary hearing on appeal); *West & Bethea v. Board of Commissioners of Baltimore City*, 7 Op. MSBE 500 (1996) (failure to hold conference within ten days was cured by the *de novo* administrative hearing on merits before the local board); *Harrison v. Somerset County Board of Education*, 7 Op. MSBE 391 (1996) (failure to grant conference with superintendent or his representative in timely fashion was cured by local board's full evidentiary hearing on appeal).

Based upon our review of the record and after consideration of the arguments of the parties, we adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge. For the reasons stated by the ALJ, we affirm the termination decision of the Baltimore City Board of School Commissioners.

Edward L. Root  
President

JoAnn T. Bell  
Vice President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

March 31, 2004

WARDELL HARMON,

APPELLANT

v.

NEW BOARD OF SCHOOL

COMMISSIONERS OF

BALTIMORE CITY

\* \* \* \* \*

\* BEFORE SUSAN A. SINROD,

\* ADMINISTRATIVE LAW JUDGE,

\* MARYLAND OFFICE OF

\* ADMINISTRATIVE HEARINGS

\* OAH No.: MSDE-BE-01-03-20734

**PROPOSED DECISION**

STATEMENT OF THE CASE

ISSUE

SUMMARY OF THE EVIDENCE

FINDINGS OF FACT

DISCUSSION

CONCLUSIONS OF LAW

**PROPOSED ORDER**

**STATEMENT OF THE CASE**

On or about November 4, 2002, Wardell Harmon, ("Appellant"), a teacher employed by the Baltimore City Public School System, received notification from the Board Executive recommending termination of his employment. The Appellant appealed the recommendation to the New Board of School Commissioners of Baltimore City (the "Board"). Elise Jude Mason, a Hearing Examiner of the Board ("Hearing Examiner") conducted a hearing on December 18, 2002, pursuant to Md. Code Ann., Educ. § 6-203 (2001). The Hearing Examiner recommended that the Board sustain the recommendation of the Board Executive that the Appellant's teaching position be terminated. The Appellant appealed the Hearing Examiner's recommendation to the Board. On March 25, 2003, the Board upheld the Hearing Examiner's recommendation that the dismissal be sustained. The

Appellant appealed the Board's order to the Maryland State Board of Education and the matter was scheduled before the Office of Administrative Hearings, pursuant to Md. Code Ann., Educ. § 6-202(4) (Supp. 2003).

A hearing was conducted on November 5, 2003, before Susan A. Sinrod, Administrative Law Judge ("ALJ"), at the Office of Administrative Hearings ("OAH"), 11101 Gilroy Road, Hunt Valley, Maryland. The Appellant was present and represented himself. Brian Williams, Esquire, Associate Counsel, Baltimore City Public School Systems represented the Board. Code of Maryland Regulations ("COMAR") 13A.01.01.03P.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2003); COMAR 13A.01.01.03P; COMAR 28.02.01.

### **ISSUE**

The issue on appeal is whether the termination of the Appellant pursuant to Md. Code Ann., Educ. § 6-202(a)(ii) and (iv) (2001) for misconduct in office and willful neglect of duty was proper.

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The parties agreed to submit the case upon the documents already submitted in the record below. Therefore, no additional documents were submitted for review, and the exhibits from the record below are incorporated and adopted by reference into this record.

For both parties as a joint exhibit, the Hearing Examiner below admitted the following document:

J-X-1- Agreement between the Baltimore Teachers Union American Federation of Teachers, Local 340 AFL-CIO Baltimore City and The New Board of School Commissioners of Baltimore City, 2001-2003.

For the Appellant, the Hearing Examiner below admitted the following documents:

R-X-1- Professional Status Certificate Renewal, State of Delaware, dated July 1, 2000.

R-X-2- Advanced Professional Certificate, dated January 1, 1997 through January 1, 2002.

R-X-3- Letter from Theodore Thornton to the Appellant, dated March 2, 2000.

For the Chief Executive Officer, the Hearing Examiner below admitted the following documents:

CEO-X-1- Memorandum from Gary S. Unfried, Principal, Harbor City High School to Arthur Chenowith, Executive Assistant, High School Area Office #6, dated January 16, 2002.

CEO-X-2- Four form letters on Congo Funeral Home letterhead, dated November 1, 2001, November 26, 2001, January 2, 2002 and January 11, 2002.

CEO-X-3- Facsimile transmission from Wayana Morton to Gary S. Unfried, dated January 16, 2002.

CEO-X-4- Memorandum from Arthur Chenowith to the Appellant, dated February 19, 2002.

CEO-X-5- Statement of Charges, undated.

### Testimony

No testimony was taken at the hearing. The parties made oral arguments and relied on the record below.

Before the Hearing Examiner, the Chief Executive Officer presented the testimony of Gary S. Unfried, Principal, Harbor City High School, and Dr. Arthur Chenoweth, Executive Assistant to the Area Executive Officer in the 2000-2001 school year.

At the hearing below, the Appellant testified on his own behalf and also presented the testimony of Gary S. Unfried, Principal.

### **FINDINGS OF FACT**

After careful consideration of the record, I find, by a preponderance of the evidence, the following facts:

1. The Appellant was employed with the Baltimore City School System for approximately seven or eight years. He was a teacher at Harbor City High School since August 2001.<sup>2</sup>
2. In late 2001, early 2002, the Appellant requested bereavement leave to attend five different funerals of family members.
3. In support of his attendance at four of those funerals, the Appellant submitted a form letter from Congo Funeral Home (“Congo”) in Wilmington Delaware that stated the following:
  - a) Form dated November 1, 2001, stated that on that date, the Appellant attended the funeral service of Sheila Ann Simpson, cousin.
  - b) Form dated November 26, 2001, stated that on that date, the Appellant attended the funeral service of Mary Ann Richard, cousin.

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<sup>2</sup> There was some indication in the Appellant’s argument that he was not actually teaching at the time of the incidents discussed herein. However, both parties went forward on the premise that the Appellant was employed as a teacher, and I have assumed the same throughout this decision.

- c) Form dated January 2, 2002, stated that on that date, the Appellant attended the funeral service of Roosevelt D. Miller, cousin.
  - d) Form dated January 11, 2002, stated that on that date, the Appellant attended the funeral service of Irene Williams, Aunt.
1. A person named Shirl Harvey signed each of the forms from Congo.
  2. Shirl Harvey passed away on July 7, 2001. Congo ceased using Shirl Harvey's name on their forms in August 2001.
  3. The forms that the Appellant submitted from the Congo Funeral Home were no longer in use at the time of the funerals that he claimed to have attended. Shirl Harvey signed them prior to her death.
  4. The Appellant also submitted a certificate of attendance for a funeral on February 13, 2002 of Howard Saddler, cousin. The certificate of attendance was from the House of Wright Mortuary, Inc. in Wilmington Delaware.
  5. The Certificate of Attendance from the House of Wright Mortuary was not the form that the House of Wright uses. The signature of Robert Wright ("Wright"), the owner of the funeral home, was from a rubber stamp and not his original signature.
  6. Wright does not use the rubber stamp to sign the certificate of attendance forms.
  7. The Respondent was personally acquainted with the proprietors of Congo, and also with Wright, the proprietor of the House of Wright Mortuary. He also knew Shirl Harvey.

### **DISCUSSION**



The applicable law provides that a teacher may be suspended or dismissed for cause, by a local board on the recommendation of the local superintendent, and that the teacher has a right to a hearing on such a dismissal or suspension. Md. Code Ann., Educ. § 6-202(a) (Supp. 2003) reads, in pertinent part, as follows:

- (a)(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

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- (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;

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- (v) Willful neglect of duty.

(2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.

(3) If the individual requests a hearing within the 10-day period:

- (i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and

- (ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.

(4) The individual may appeal from the decision of the county board to the State Board.

The standard of review in an appeal of a teacher dismissal case to the State Board is prescribed by COMAR 13A.01.01.03E. In pertinent part, COMAR 13A.01.01.01E provides:

(3) Teacher Dismissal and Suspension.

- (a) The standard of review in teacher dismissal or suspension shall be de novo as defined in §E(3)(b).
- (b) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain a disciplinary infraction.
- (c) The county board shall have the burden of proof.
- (d) The State Board, in its discretion, may modify a penalty.

Pursuant to the COMAR section cited above, I have undertaken a thorough review of the evidence presented and the decisions rendered in this matter from all levels. As to the credibility of the witnesses who testified before the Hearing Officer, I give considerable deference to his findings. *Anderson v. Dep't of Public Safety*, 330 Md. 187, 212, 623 A.2d. 198, 210 (1993). As a result of my review, I conclude that the evidence clearly established the reasonableness of the Board's decision to terminate the Appellant.

The Board argued that the record below established that the forms that the Appellant submitted in an attempt to certify his attendance at funerals on November 1, 2002, November 26, 2001, January 2, 2002 and January 11, 2002 at Congo were falsified. The Board referred to the testimony below of Unfried, who insisted that the Appellant had possession of, and utilized outdated forms signed by a person who pre-deceased the funerals that he allegedly attended. Unfried stated that he spoke to Wayana Morton ("Morton") from Congo, who confirmed that the signatory of the documents was Shirl Harvey, who passed away in July 2001. Additionally, Morton told Unfried that the Appellant utilized a form that was outdated and invalid, as it contained a different font size, type style and format. Morton faxed the Congo's standard form to Unfried, which was part of the record below. CEO-X-3. Morton told Unfried that this document has been in use since August 2001.

Additionally, the Board claimed that the form that the Appellant offered regarding a funeral on February 13, 2002 at the House of Wright Mortuary in Delaware was also falsified. In support of that contention, the Board referred to the testimony of Chenowith before the Hearing Examiner. Chenowith testified that he spoke to Wright, the proprietor of the House of Wright Mortuary, who revealed that the document was not the document that the House of Wright used, *and* Wright did not

recall that the Appellant attended that particular funeral. *See*, testimony of Unfried and Chenowith, Tr. of Hearing, December 18, 2002.

In its argument, the Board responded to the Appellant's prior arguments that the Board's case was based entirely upon hearsay. The Board maintained that according to the New Board of Commissioners of Baltimore City rules, hearsay is admissible, and a decision can be based mostly or solely upon hearsay evidence if that evidence is shown to be sufficiently reliable. Regardless,

Counsel for the Board insisted that in this case, the decision below was not based solely on hearsay. Counsel for the Board also addressed the Appellant's contention that he did not receive the Order that affirmed the Hearing Examiner's recommendation to sustain his termination. The Board pointed to a certified mail receipt in the record, that established that the Order was mailed to Keith

~~In the Appellant's argument, the counsel for the Appellant in the Board's case below, dated March 27, 2003, its~~

entire case. He understood that hearsay was admissible, but took issue with the fact that the Board's case was based solely on hearsay. He insisted that there was never a thorough investigation of the incident, and argued that all statements made by Chenowith in the hearing below were defamatory. He claimed that he was verbally dismissed, never having received anything in writing that formally informed him of his dismissal. In the hearing below, counsel for the Appellant argued that the Agreement between the Baltimore Teachers Union and the Board allows for bereavement leave without the requirement of written proof of the corresponding death. Therefore, according to counsel for the Appellant, whether or not the documents were falsified was not the issue. Rather, he argued that the only issue was whether the Appellant actually attended those funerals.

I have carefully reviewed the record below and the arguments of both parties before me. Having done so, I conclude that the Board did establish by a preponderance of the evidence that the

dismissal of the Appellant should be sustained. The record established that the Appellant falsified work absence forms on Congo letterhead by utilizing outdated forms signed by a person who predeceased the funerals that he allegedly attended. CEO-X-3. My observation of the Congo document that Morton faxed to Unfried as compared to the one that the Appellant submitted brought to light the differences between the two. While the Appellant's form definitely mirrors Congo's letterhead, the format and font styles are obviously different.

Similarly, regarding the certificate of attendance for the funeral on February 13, 2002 at the House of Wright Mortuary, Wright told Chenowith that the Appellant's form was not the one that the House of Wright uses. The signature at the bottom was his rubber stamp that he used for checks but not for the certificate of attendance forms. Wright also faxed the actual form that he uses to Chenowith. Again, the document was significantly different from the document tendered by the Appellant. CEO-X-4. The Appellant even admitted in his testimony below that he possessed blank forms from the House of Wright and he completed the form himself. He still maintained that he attended the funeral.

Despite the Appellant's assertions, I found the evidence that the Board presented to be persuasive, credible and reliable. While testimony as to telephone conversations between Unfried and Morton, and Chenowith and Wright did constitute hearsay, I found it to be reliable, relevant hearsay. This conclusion was supported by the facsimile transmissions from both Congo and Wright that established that the forms that the Appellant presented to Unfried were not currently valid and were falsified. The Appellant did not offer any reason for me to consider that Unfried or Chenowith lied under oath or that Morton or Wright fabricated stories regarding the use of their forms. The Appellant's argument did not convince me that the documents he used were authentic, or that he even

attended the funerals. The Appellant postured no explanation for the unlikely onslaught of deaths in his family. While a tragedy if true, it would not have been coincidentally necessary that he utilize old and/or falsified forms in each case. The Appellant did not present a shred of evidence that persuaded me that he was telling the truth. He could not even explain the exact relationship between himself and the people whose funerals he allegedly attended.

It was interesting to note the Hearing Examiner's comments regarding a pattern in the dates of the Appellant's leave for the funerals at issue. Each fell at the very beginning or very end of the week so that the end result was that the Appellant had a long weekend. Additionally, the Appellant testified below and argued to me that he was acquainted with the proprietors of both funeral homes, and with Shirl Harvey, which perhaps explained the method in which he procured letterhead and outdated, currently unused forms.

Regarding the issue of whether the Appellant received proper notices, his argument on that matter was vague. At first, he argued that he only received verbal, not written notice of his dismissal. However, in his testimony below, he conceded that he did receive a letter, wherein the Chief Executive Officer of the New Board of Commissioners of Baltimore City informed him that she was recommending the Appellant's dismissal. Tr. of Hearing December 18, 2002, p. 62; *See also*, CEO-X-5, Hearing December 18, 2002. Later in his argument before me, it seemed as though he was claiming that he never received the final Order of the Board that affirmed his dismissal. Contrarily, there was a receipt of mailing of the order to Keith Zimmerman, Esq., the Appellant's counsel below, and there was no evidence of non-receipt of that mailing. I conclude after review of the record below, that the Appellant received both the recommendation for dismissal and the order affirming the recommendation of the Hearing Examiner.

As I have concluded that the Appellant falsified funeral home documents and submitted them as attempted proof of his attendance at five funerals in December 2001 and January and February 2002, I must now determine whether such was a violation of Md. Code Ann., Educ. § 6-202 (Supp. 2003). The Appellant's argument below that since the Appellant was not *required* to submit proof of attendance at these funerals, falsification thereof did not constitute misconduct in the office under § 6-202 was in error. He argued that the only relevant matter was whether the Appellant attended these funerals, and he suggested that there was no evidence to establish that he did not. I disagree. Whether or not required to do so, the Appellant submitted the forms. The forms were old and falsified and were not authentic. He was dishonest as to his dealings with Unfried regarding his bereavement leave, and this dishonesty most definitely constituted misconduct in office and willful neglect of duty. To expect a school board charged with the responsibility of educating children to continue to employ a teacher who has falsified documents and fabricated leave excuses is contrary to any and all objectives and goals for which a school system could possibly exist. It is for this reason that I conclude that the termination of the Appellant should be sustained.

#### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the New Board of School Commissioners of Baltimore City's dismissal of the Appellant for misconduct in office and willful neglect of duty is supported by a preponderance of the evidence. Md. Code Ann., Educ. § 6-202(a)(ii) & (v) (Supp. 2003); COMAR 13A.01.01.01E.

#### **PROPOSED ORDER**

It is **PROPOSED** that the decision of the New Board of School Commissioners of Baltimore City to terminate the Appellant for misconduct in office and willful neglect of duty be **UPHELD**.

December 18, 2003

Date

Susan A. Sinrod

Administrative Law Judge

SAS/dl

# 58585

**NOTICE OF RIGHT TO FILE OBJECTIONS**

Any party adversely affected by this Proposed Decision has the right to file written objections within ten (10) days of receipt of the decision; parties may file written responses to the objections within ten (10) days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.01.03P(4). The Office of Administrative Hearings is not a party to any review process.

WARDELL HARMON,

APPELLANT

v.

NEW BOARD OF SCHOOL

COMMISSIONERS OF

BALTIMORE CITY

\* \* \* \* \*

\* BEFORE SUSAN A. SINROD,

\* ADMINISTRATIVE LAW JUDGE,

\* MARYLAND OFFICE OF

\* ADMINISTRATIVE HEARINGS

\* OAH No.: MSDE-BE-01-03-20734

**FILE EXHIBIT LIST**

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