

MICHAEL ABRON,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-32

OPINION

INTRODUCTION

This appeal involves an exception filed by Michael Abron seeking to set aside the Revised Proposed Default Order of the Maryland Office of Administrative Hearings (“OAH”), which proposes to hold Mr. Abron in default and dismiss his case because he failed to appear personally or through counsel at the Pre-Hearing Conference.

FACTUAL BACKGROUND

On November 24, 2003, Andre J. Hornsby, Ed. D., the then Chief Executive Officer (“CEO”) of the Prince George’s County Board of Education (“local board”) advised Mr. Abron of his intention to recommend to the local board that Mr. Abron be terminated from his employment as a teacher in accordance with Section 6-202 of the Education Article, Annotated Code of Maryland. (Telephone Pre-hearing Conference Memorandum, p. 1). Dr. Hornsby recommended the termination based on his finding that Mr. Abron “was insubordinate to his supervisors, that he was incompetent in the delivery of instruction, and that he willfully neglected his duties in managing his classroom.”¹ (*Id.*).

Mr. Abron requested a hearing which was held on November 9, 2004, before Jerome Stanbury, Esq.², a Hearing Examiner appointed by the local board. (Telephone Pre-hearing Conference Memorandum, p. 1). Mr. Stanbury issued his Findings of Facts and Recommendations concluding that the termination of Mr. Abron should be upheld. (*Id.*; Notice of Appeal and Request for Hearing, p. 2). Mr. Abron appealed this recommendation to the local

¹ Dr. Hornsby based his findings on Mr. Abron’s unsatisfactory evaluations for the 2002-2003 school year and an interim unsatisfactory evaluation for the 2003-2004 school year. (Telephone Prehearing Conference Memorandum, p. 1). Mr. Abron also refused to meet with the Regional Executive Director regarding the evaluation and he was unable or unwilling to maintain control in his classroom. (*Id.*).

² In the Notice of Appeal and Request for Hearing, Ms. Linda Earle-Hill is named as the Hearing Examiner for the Prince George’s County Board of Education.

board. (*Id.*). On December 15, 2005, the local board adopted the recommendation and ordered Mr. Abron's termination. (Telephone Prehearing Conference Memorandum, p. 1; Notice of Appeal and Request for Hearing, p. 2).

An appeal followed to the State Board. Mr. Abron requested that the State Board reverse the local board's decision because the recommendation of termination was "arbitrary and unreasonable and contrary to sound educational policy." (Notice of Appeal and Request for Hearing, p. 1; Revised Proposed Default Order, p. 1). Alternatively, the local board requested that the State Board uphold the Appellant's termination and dismiss the appeal because its decision was "proper and appropriate." (Answer to Appellant's Notice of Appeal and Request for Hearing, p. 2).

Because this appeal involved the termination of a certificated employee, the State Board referred the case to the OAH for an evidentiary hearing. COMAR 13A.01.05.07.

On March 31, 2006, OAH mailed a notice to Mr. Abron by certified mail, return receipt requested, at his last address of record, advising him that a telephone Pre-Hearing Conference would convene at 9:30 a.m. on May 19, 2006. (Revised Proposed Default Order, p. 1). The notice also advised Mr. Abron that he must file a Pre-Hearing Conference Statement and provide a telephone number at least five calendar days prior to the telephone Pre-Hearing Conference and that any questions should be directed to the Clerk's Office. (*Id.*). Mr. Abron signed the return receipt, which was delivered back to OAH on March 28, 2006. (*Id.*). However, Mr. Abron did not submit a Pre-Hearing Conference Statement or a telephone number, nor did he make any inquiry with the Clerk's Office. (*Id.*).

The Pre-Hearing Conference was convened as scheduled, at which time neither Mr. Abron nor anyone serving as his legal representative appeared. (*Id.*). The Administrative Law Judge (ALJ) made several attempts to locate a current telephone number for Mr. Abron, but all attempts were unsuccessful. (*Id.*).

On May 22, 2006, Administrative Law Judge Wayne A. Brooks entered a Revised Proposed Default Order proposing that Mr. Abron be found in default, that all proceedings be terminated and that a disposition of dismissal be entered against Mr. Abron. (*Id.*).

On June 8, 2006, Mr. Abron filed with this Board an Opposition to the Proposed Default Order stating his reasons for failing to appear for the pre-hearing conference. He contends that he was evicted from his apartment at the time of the originally scheduled pre-hearing conference call due to his inability to pay his rent, which he argues is "directly related to the unlawful termination action by the PG County Board of Education." (*Id.*). He states that he assumed that the Maryland State Teachers Union ("Union") would represent him at the Pre-Hearing Conference, as they did during his local board hearing in December. (*Id.*). Mr. Abron contends that after he spoke to Union representatives in late January, 2006 and was told that he would be receiving representation, he never received a phone call or letter indicating that the Union was

not going to represent him. (*Id.*). Mr. Abron does concede, however, that he may not have received notice of the Union's nonrepresentation because the Union could not reach him due to his eviction.

Lastly, Mr. Abron argues that he provided a cell phone number in his original appeal letter dated February 1, 2006. He states that he did not receive any messages or calls on this line during the relevant time period. He does admit, however, that his cell phone service was turned off due to lack of funds. Mr. Abron claims that he did not receive any messages regarding this matter from the phone service. (*Id.*).

On September 26, 2006, Appellant and the local board appeared before the State Board for oral argument on the ALJ's proposed default order.

STANDARD OF REVIEW

This case involves a challenge to the ALJ's proposed default order because the Appellant failed to appear at the Pre-Hearing Conference. Such an order is "reviewable in accordance with the delegating agency's regulations governing review of proposed decisions." COMAR 28.02.01.20(C). Although the State Board regulations are silent on the standard of review applied to proposed default orders, we will apply a "good cause standard," the same standard used by the OAH to determine whether a final default order should be overturned. COMAR 28.02.01.20(B)(1)(stating that "the judge may, for good cause, vacate or modify the final default order and set the case for further proceedings as appropriate.").

Good cause is a test "of ordinary prudence, that is, whether the claimant prosecuted his claim with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances." *Madore v. Balt. County*, 34 Md.App. 340, 345 (1976)(holding that the trial court did not abuse its discretion in determining that plaintiff failed to show good cause for noncompliance with statute requiring that written notice of action against municipal corporation be given within 180 days.). In addition, the court has broad discretion in determining whether good cause has been met. *Id.* at 346.

ANALYSIS

Mr. Abron challenges the ALJ's proposed default order on several grounds. First, he argues that he was evicted from his apartment at the time of the originally scheduled pre-hearing conference call due to his inability to pay his rent, which is directly related to his termination of employment. (Appellant's Opposition to the Proposed Default Order, p. 1). In addition, Mr. Abron contends that he assumed that the Union would represent him in the conference call. Lastly, Mr. Abron argues that he did provide a cell phone number in his original appeal letter, but did not receive any messages or calls around the time of the phone conference. (*Id.*).

We find that Mr. Abron has failed to show good cause as to why the default order should be lifted, and we address why, below.

I. The ALJ Properly Issued the Proposed Default Judgment.

“If, after receiving proper notice, a party fails to attend or participate in a pre-hearing conference . . . the judge may proceed in that party’s absence or may . . . issue a final or proposed default order against the defaulting party.” COMAR 28.02.01.20(A). In this case, therefore, we conclude that the ALJ properly issued the proposed default order.

The OAH mailed a notice to Mr. Abron by certified mail, return receipt requested, advising him of the telephone conference. (Revised Proposed Default Order, p. 1). The notice advised Mr. Abron that he must file a Pre-Hearing Conference Statement and provide a telephone number at least five calendar days prior to the telephone conference. (*Id.*). Furthermore, the notice stated that any questions about the instructions could be directed to the Clerk’s Office of the OAH. (*Id.*).

Despite having received the notice, Mr. Abron did not provide a Pre-Hearing Conference Statement or a telephone number, nor did he make any an inquiry to the Clerk’s Office anytime prior to the conference call. Ultimately, Mr. Abron failed to appear at the conference and the ALJ rightfully issued a proposed default order.

II. Mr. Abron Failed To Show Good Cause for Failing to Appear

A. Inability to Appear on Pre-hearing Conference Call Due to Eviction

Despite Mr. Abron’s alleged eviction from his home, the record shows that he was living at that address at the time OAH sent notice regarding the pre-hearing telephone conference because he signed the return receipt.

He had actual notice of the Pre-Hearing Conference notice and that he had to provide a telephone number at which he could be reached at least five calendar days before the telephone conference. (Revised Proposed Default Order, p. 1). Mr. Abron does not dispute these facts. An ordinary prudent person with notice of a pre-hearing conference would have notified the OAH with new contact information in the event of an eviction. Therefore, his eviction had no bearing on his knowledge or responsibility to follow up with the OAH for the pre-hearing conference call.

B. Assumption Regarding Union Representation on Conference Call

Mr. Abron, in addition, argues that he assumed that the Maryland State Teachers Union would be representing him on the pre-hearing conference call as they did during the local board hearing in December. (Appellant's Opposition to the Proposed Default Order, p. 1). Mr. Abron says that he spoke with Union representatives in late January 2006 and was informed that he would be receiving representation. (*Id.*). Mr. Abron concedes the fact that had the Union changed their minds, they may not have been able to contact him at the phone number of the residence from which he was evicted from. (*Id.*).

Mr. Abron did not act as an ordinary prudent person would have acted with respect to the Union. Four months had passed between late January, 2006, when he last spoke to the Union representatives regarding representation at the pre-hearing conference, and the conference itself on May 19th, 2006. He should have notified the Union of his eviction and subsequently provided them with a new contact number or called some time during those four months between the conversation regarding representation and the conference.

Furthermore, Mr. Abron received the pre-hearing conference notice on March 28, 2006, two months after he allegedly spoke to Union representatives. (Revised Proposed Default Order, p. 1). If Mr. Abron could not be reached and did not speak to the Union representatives since late January, how would the Union know that the pre-hearing conference would be in May? Mr. Abron had all the knowledge, but did not share it with the OAH nor the Union that he assumed represented him in this matter.

C. Provision of Cell Phone Number on Appeal Letter

Lastly, Mr. Abron argues that he provided his cell phone number in his original appeal letter and did not receive any messages or calls on his cell phone during the relevant time of the conference. (Appellant's Opposition to the Proposed Default Order, p. 1). He, however, concedes that his cell phone was turned off because he did not pay his cell phone bills. (*Id.*). Mr. Abron, therefore, had knowledge prior to the conference that his cell phone was not functioning and that the number he previously provided was no good. Furthermore, the pre-hearing conference notice required him to provide a telephone number at least five days before the conference call. (Revised Proposed Default Order, p. 1). Moreover, the fact that he did not receive any messages subsequent to the conference is not material as to why he did not appear.

CONCLUSION

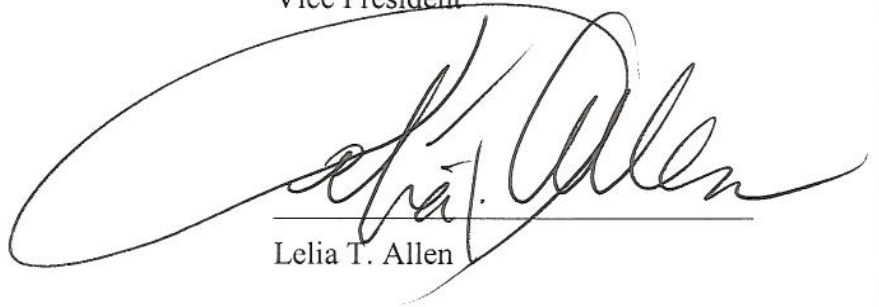
Mr. Abron has not shown good cause to lift the default order based on his failure to appear on the pre-hearing conference call. An ordinary prudent person in Mr. Abron's circumstances would have notified the OAH with a contact number as the notice required. Mr. Abron failed to do so. Accordingly, we adopt the Revised Proposed Default Order issued by the ALJ and dismiss this appeal.



Edward L. Root
President

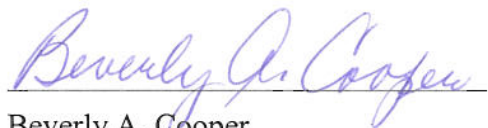


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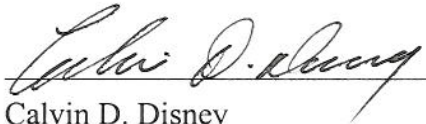



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October 25, 2006