

SHIRLEY A. ALEXANDER,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-06

OPINION

In this appeal, Appellant challenges the local board's affirmance of Appellant's termination from employment as a bus driver due to Appellant's failure to pass a physical exam. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant was employed as a special education bus driver with Baltimore County Public Schools ("BCPS") from 1980 until 2002, with one break in service. Appellant was on sick leave from May 1999 through May 2001, claiming a work related injury of bilateral carpal tunnel syndrome for which she ultimately received workers' compensation.¹ Starting in May 2001, Appellant began using sick leave and continued to exhaust this sick leave through March 2002, at which point she was no longer in paid status.

Appellant initiated the process for disability retirement in February 2001, however she never returned the necessary documents to complete the application. The school system then applied for disability retirement on Appellant's behalf in July 2001. The Medical Board determined that Appellant was ineligible for disability retirement and advised Appellant of her right to appeal. *See* letter of 7/23/01 from Limpert to Alexander. Appellant did not appeal the decision. Appellant was subsequently barred from re-applying for disability retirement benefits because she was no longer an active employee.

Meanwhile, in August 2001, Appellant failed the annual State Department of Transportation ("DOT") physical for certification as a school bus driver which is required pursuant to COMAR 13A.06.07.06C(5).² By letter of September 6, 2001, Dr. Domingo Maniago

¹Appellant's sick leave through May 4, 2001 was restored once the workers' compensation determination was made.

²COMAR 13A.06.07.06C(5) states that "[t]he school vehicle driver shall pass an annual appropriate medical examination as stated in COMAR 11.19.05.01."

indicated that because Appellant was unable to perform the duties outlined in the job description for a school bus driver, Appellant's DOT certification was rescinded. Accordingly, Linda Fitchett, Director of Transportation, recommended to Rita Fromm, the Executive Director of Auxiliary Services then serving as the superintendent's designee, that Appellant be terminated as a school bus driver due to her inability to meet this prerequisite and due to the fact that she was denied disability retirement. *See* 4/12/02 letter from Fitchett to Alexander.

As a result of Ms. Fitchett's recommendation for termination, Ms. Fromm further reviewed the matter and conducted an administrative hearing. Appellant met with human resources and the school system investigated the existence of other positions that Appellant might fill. Appellant disclosed however that her medical condition prevented her from performing a wide range of tasks, including the clerical and other positions that were suggested. Because Appellant was not qualified for any of the suggested positions, Ms. Fromm upheld Ms. Fitchett's recommendation for Appellant's termination.

On appeal to the local board, the matter was transferred to a hearing examiner for a full evidentiary hearing. The hearing examiner concluded that the superintendent's decision to terminate Appellant was neither arbitrary, unreasonable, nor illegal. The hearing examiner specifically noted that the termination decision did not violate the *Americans with Disabilities Act* (ADA) because the Appellant failed to provide sufficient evidence to support a finding that her condition fell within the ambit of the ADA which requires something more than just a mere diagnosis of carpal tunnel syndrome. In addition, the school system sought to identify other available jobs within BCPS for Appellant to fill, but Appellant was unable to perform any of those positions.

By unanimous decision, the local board adopted the recommendations of the hearing examiner and upheld the superintendent's decision to terminate Appellant.³

ANALYSIS

In *Livers v. Charles County Board of Education*, 6 Op. MSBE 407 (1992), *aff'd* 101 Md. App. 160, *cert. denied*, 336 Md. 594 (1994), the State Board held that a non-certificated support employee is entitled to administrative review of a termination pursuant to § 4-205(c)(4) of the Education Article.⁴ The standard of review that the State Board applies to such a termination is that the local board's decision is *prima facie* correct and the State Board will not substitute its

³Three members of the local board were absent at the time of the decision and the two new members did not participate in the appeal.

⁴In its 2002 session, the Maryland General Assembly amended § 6-510 of the Education Article by providing that due process for discipline and discharge of noncertificated employees is a permissive subject of bargaining. Because Ms. Alexander's termination preceded the statutory change, the *Livers*' decision is controlling on her due process rights.

judgment for that of the local board unless its decision is arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.01.03E(1).

Americans with Disabilities Act Claim

Appellant maintains that her termination is a violation of the *Americans with Disabilities Act* because the school system did not provide or attempt to identify reasonable accommodations for Appellant. The local board maintains that Appellant has not demonstrated that her disability falls within the realm of the ADA.

The ADA requires that a covered entity provide “reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an . . . employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship.” 42 U.S.C. § 12112(b)(5)(A). A disability is defined as (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. § 12102(2). The Supreme Court has held that to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives and the impact must be permanent or long term. In the case of carpal tunnel syndrome, the Court indicated that the mere diagnosis of carpal tunnel syndrome is insufficient to indicate whether an individual has a disability within the meaning of the ADA due to the potential differences in the severity of the syndrome’s effects. Rather, an individualized assessment of the effect of the impairment is necessary. *Toyota Motor Manufacturing, Inc. v. Williams*, 534 U. S. 184, 198-201 (2002).

Based upon our review of the record, we concur that Appellant has not sufficiently met her burden of demonstrating that her physical limitations fall within the ambit of the ADA.⁵ While Appellant suffered limitations as a result of the carpal tunnel syndrome, the record fails to disclose the manner in which the limitations prevented or severely restricted Appellant from doing activities that are of central importance to daily life. In fact, the record is devoid of any substantive testimony regarding how the carpal tunnel syndrome has affected Appellant’s daily life other than her inability to work. Appellant’s diagnosis of carpal tunnel syndrome is insufficient without more to qualify her under the ADA. Additionally, the fact that Appellant received a grant of worker’s compensation does not automatically invoke the ADA.

Moreover, the record discloses that the school system attempted to work with Appellant to identify vacant positions that she could fill. Although Appellant suggests in her appeal that she could have driven a bus equipped with a push button or that she could have been an instructional assistant, Appellant indicated that she could not lift over 20 pounds. Frances Allen,

⁵Nor is there any evidence that Appellant was terminated based on retaliation as alleged for the first time in Appellant’s response to the local board’s motion for summary affirmance.

Risk Manager for BCPS, testified that based on Appellant's limitations she was unable to perform the physical demands of either a bus driver or instructional assistant because both jobs required the physical ability to evacuate children from a bus or a classroom. In addition, Appellant was no longer certified as a bus driver because she failed the DOT physical, and there were no instructional assistant positions available. (Tr. 110-111). Furthermore, there is nothing in the record documenting that Appellant's physician had released her for return to work.

Disability Retirement Benefits Denial

Appellant also maintains that the termination decision should be rescinded because she was unaware that the local board had applied for disability retirement on her behalf and consequently she did not have the opportunity to present information from her doctor for consideration, which she claims ultimately led to the denial of the disability application. She argues that she would not have been terminated had disability retirement been granted. The local board and superintendent have no authority with regard to the disability retirement decision, thus the denial of disability retirement is not a matter for consideration by the State Board. The school system was not involved in the processing of the application except for the initial filing on Appellant's behalf which is permitted pursuant to the Baltimore County Code, Pensions and Retirement, Section 23-53. Notification of an individual that an application has been submitted is traditionally done by the County Office, not the school system. (Tr. 116).

Despite Appellant's claims that she had no knowledge of the filing, by letter of July 23, 2001, Katherine V. Limpert, Pay Systems Administrator for the Baltimore County Office of Budget and Finance, notified Appellant that the local board had requested that Appellant be processed for disability retirement due to medical conditions involving her arms, wrists, right shoulder, and cervical spine.⁶ Even if Appellant did not have initial notice that the local board had applied for disability retirement on her behalf, the record discloses that Appellant received notice of the decision by the County Government to deny disability retirement. (*See* Tr. 36-37). The notice contained a form that she could have used to appeal that decision to the Board of Appeals within thirty days. Appellant did not do so.

CONCLUSION

For all of these reasons, we do not find that the decision of the Baltimore County Board of Education is arbitrary, unreasonable, or illegal. Accordingly, we uphold Appellant's

⁶This letter, which is part of Appellant's disability application file, was initially unavailable to the local superintendent and was therefore not a part of the record below, but is now available to the local board. Pursuant to COMAR 13A.01.01.03C(2)(b), the State Board may consider this additional evidence.

termination from her position as a bus driver.

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February 25, 2004