

CASNELL JACKSON

Appellant

v.

HOWARD COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-08

OPINION

INTRODUCTION

The Appellant has challenged the decision of the Howard County Board of Education (local board) affirming the Appellant's termination from his position as a custodian for violations of various school system policies. The local Board has filed a Motion to Dismiss the case for untimeliness. The Appellant has responded to that motion and the local board has replied.

FACTUAL BACKGROUND

This appeal rose as a result of the Appellant's termination from his position as custodian for violations of various school system policies pertaining to discrimination; sexual harassment; bullying, cyber-bullying, harassment, or intimidation; and employee conduct and discipline. The local board argues that the appeal was not timely filed.

STANDARD OF REVIEW

State Board regulations govern this appeal. The State Board exercises its independent judgment in interpreting its regulations. COMAR 13A.01.05.05E.

LEGAL ANALYSIS

The local board has filed a Motion to Dismiss the case for untimeliness. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board "shall be taken within 30 calendar days of the decision of the local board" and that the "30 days run from the later of the date of the order or the opinion reflecting the decision." An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. COMAR 13A.01.05.02B(3).

The local board issued its decision in this case on February 10, 2011. That same day, the local board's Administrative Specialist sent the decision via certified mail to the Appellant's union representative who represented him in the case. (Certified Mail Receipt). The union representative received the mailing on February 16, 2011. (Return Receipt Request Card). The cover letter to the local board's decision advised the union representative of Appellant's right to appeal the local board's decision to the State Board within 30 days of the date of the local board's written decision. (Mtn. Ex. 2). An appeal of that decision should have been filed with the State Board on or before March 14, 2011.

Appellant first submitted an appeal to the State Board on April 7, 2011. Because the letter of appeal did not include the required information, as is our practice, we asked the Appellant to perfect the appeal by submitting the necessary information. We advised Appellant that, assuming his appeal was timely filed, he had until April 27, 2011 to do so. (Letter, 4/13/11). Appellant did not submit the additional information by the April 27, 2011 deadline. Rather, on July 28, 2011,¹ a second union representative submitted additional information to the State Board on Appellant's behalf.

Appellant's initial letter of appeal was received by the State Board on April 7, after the expiration of the 30 day time frame for appealing a local board decision. Thus, the appeal was untimely filed. Even if the Appellant had submitted the additional information by April 27, the appeal would still be untimely because the opportunity to perfect the appeal was only valid if the appeal was timely filed in the first place. Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice of the decree. *See Scott v. Board of Educ. of Prince George's County*, 3 Ops. MSBE 139 (1983).

Appellant's union representative asks the State Board to deny the Motion to Dismiss, claiming that all correspondence sent by the local board and the State Board concerning the appeal has been going to the wrong address. This assertion is misleading. All correspondence prior to the July 28 submission by the second union representative was sent to the correct addresses. This correspondence is what is critical to the timeliness issue. The local board sent its correspondence to the Appellant's first union representative who handled Appellant's case before the local board. We sent our correspondence to the Appellant, who initially filed his appeal *pro se*. Once the second union representative became involved in the State Board case, well after the 30 day time frame had expired, all correspondence was sent to the address on the union representative's letterhead. This was apparently not the union representative's correct address. Thus any confusion about the address is irrelevant. Appellant has simply not presented any reason for the late filing.

¹ Although the letter was dated April 7, 2011, the envelope was postmarked July 25 and the State Board did not receive it until July 28.

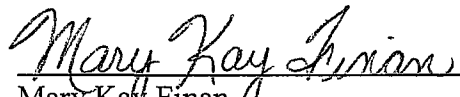
CONCLUSION


For the reasons stated above, we grant the local board's Motion to Dismiss the appeal based on untimeliness.

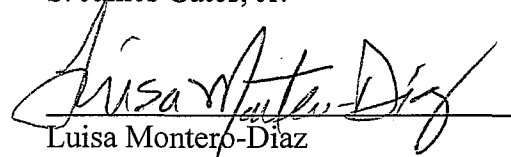

James H. DeGraffenreidt, Jr.
President

Absent

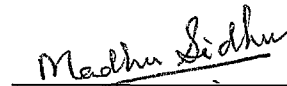
Charlene M. Dukes
Vice President


Mary Kay Finan


S. James Gates, Jr.

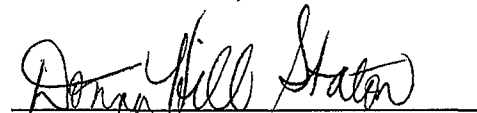

Luisa Montero-Diaz


Sayed M. Naved


Madhu Sidhu

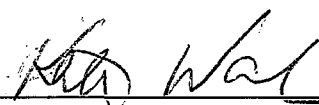
Absent

Guffrie M. Smith, Jr.


Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

February 28, 2012