

BARRY GARNER,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-16

OPINION

This is an appeal of a local board decision upholding the selection of another individual rather than Appellant for an Electrician/General Maintenance - Category IV position. Appellant maintains the local board acted arbitrarily, unreasonably, and illegally in denying him the promotion.

BACKGROUND

On June 5, 1997, Carroll County Public Schools (“CCPS”) posted a vacancy announcement for the an Electrician/General Maintenance - Category IV position. Appellant, who was employed by CCPS as an Electrician/General Maintenance - Category III, applied for the vacancy on June 17, 1997. The position, however, was awarded to another candidate on July 28, 1997.

Appellant appealed the hiring decision to the local superintendent. The matter was reviewed by the superintendent’s designee who determined on December 2, 1997, that “neither Mr. Garner nor the successful candidate met the stated qualifications for [the] position.” The designee recommended that the position be re-advertised and that the successful candidate be reinstated to his previous position. By announcement dated December 5, 1997, the job vacancy was re-advertised.

Appellant challenged the December 2, 1997 decision, claiming that he possessed the required qualifications for the position and requesting that he be considered as a qualified employee for the job vacancy.¹ In a decision issued March 16, 1998, the local board determined that Appellant did, in fact, have the necessary years of service in the electrical trade, but qualified

¹In his appeal, Appellant stated, “[w]hile I am in agreement with part of the Board’s action, I wish to be considered as a properly qualified employee for the opening.” In its decision, the local board stated that its understanding of this reference is that “Mr. Garner is referring to his agreement with that portion of Mr. Hyde’s December 2, 1997, ruling that the position in question should be re-advertised.”

its determination as follows:

In reaching this decision, we reiterate that we are only deciding the limited issue concerning the amount of electrical experience which should be credited to Mr. Garner. We have not reviewed the qualifications of the other candidate for the position, and we do not imply in any way that Mr. Garner must be the successful candidate for the re-advertised position. That decision will have to be made by the appropriate school officials after they have had the opportunity to review the qualifications of all candidates for the re-advertised position.

Appellant did not appeal the local board's March 16, 1998 decision to the State Board.

Appellant applied for the re-advertised position and interviewed for the job on March 23, 1998. Again, Appellant was not selected for the job. The candidate who received the position was the same candidate who had previously applied for the position and had been selected when it was first advertised. The new position was a lateral transfer for the selected candidate who was already in a Category IV position.

Appellant challenged the hiring decision and a hearing was held on June 3, 1998. The superintendent's designee upheld the staff's recommendation to appoint Mr. Hiner, and not Appellant, to the position, and denied Appellant's request to be placed in a comparable position. In his letter to Appellant, the superintendent's designee noted that while Appellant and the successful candidate were similarly qualified in certain areas, the candidate ultimately selected for the position had more Carroll County job-related experience.

On June 25, 1998, Appellant appealed to the local board. In a decision issued September 10, 1998, the local board upheld the superintendent's decision to deny Appellant the promotion to a Category IV position. The board indicated that the superintendent had used reasonable criteria to make the selection between two equally qualified candidates, and noted that the CCPS collective bargaining agreement grants preference to the more senior candidate to fill a vacancy where other factors are equal. This appeal followed.

ANALYSIS

As a preliminary matter, Appellant requests a hearing on his appeal before the State Board. Appellant, however, has not alleged unlawful discrimination, nor has he presented specific facts which support a claim that the superintendent's failure to promote him constituted an abuse of discretionary power. Thus, an oral evidentiary hearing is not warranted in this case. *See Nagarajan v. Montgomery County Board of Education*, 6 Op. MSBE 639, 640-641 (1993) (denying evidentiary hearing before the State Board in appeal concerning failure to promote a school operations auditor/analyst).

On the merits, Appellant argues that he is entitled to the Category IV position because, taking into account the eight years experience credited to him by the local board in their March 16, 1998 decision, he was the only qualified candidate for the position when it was initially advertised on June 5, 1997 and when he was initially interviewed on July 10, 1997. In essence, Appellant appears to be contesting the initial hiring decision.

This issue, however, was the subject of the local board's March 16, 1998 decision. In that decision, the local board indicated that Appellant was not contesting the decision to re-advertise the job vacancy. If Appellant believed that the position should not have been re-advertised and that he was entitled to the vacancy as it was initially advertised in light of the experience credited to him, the appropriate avenue for his claim was to appeal the local board's March 16, 1998 decision to the State Board. He did not do so. Because State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board's decision, this attempt to appeal the initial hiring decision now is untimely and cannot now be the subject of an appeal to the State Board. *See* Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.01.03B (3).

To the extent that this is an appeal of the hiring decision on the re-advertised position, we do not find that Appellant has met his burden in this case. While Appellant argues that the successful candidate is less qualified than he is for the job, Appellant has not submitted any evidence to support this claim. Appellant has made mere conclusory statements unsupported by any facts. The local superintendent determined that two finalists were equally qualified based upon their supervisory experience, licensure, and interview quality. He selected the other candidate who already was a Category IV because of that individual's greater length of service with CCPS and more job-related experience. The local board found these to be reasonable criteria on which to make a selection between two equally qualified candidates. Based upon our review of the record, we concur, and find that Appellant has not shown that the local board's decision was arbitrary, unreasonable or illegal.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Carroll County.

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March 30, 1999