

ELAINE REED,  
  
Appellant  
  
v.  
  
CARROLL COUNTY  
BOARD OF EDUCATION,  
  
Appellee

BEFORE THE  
  
MARYLAND  
  
STATE BOARD  
  
OF EDUCATION  
  
Opinion No. 00-4

### OPINION

Elaine Reed, a bus driver employed by a private contractor, appeals the decision of the local board to disqualify her as a school bus driver for the Carroll County school system based on her testing positive for marijuana during a random drug test. Appellant claims that she should not be disqualified because she unknowingly ingested the drug. The local board has filed a Motion for Summary Affirmance maintaining that its decision is mandated by State Board regulation and therefore is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion.

### BACKGROUND

Elaine Reed was employed as a bus driver for an independent bus contractor, New Error Investment, Inc., which provides transportation services for a number of Carroll County Public School bus routes. On October 17, 1995 and on January 31, 1997, Appellant signed the local board's "Drug/Alcohol Test Consent and Release" which indicated that "a confirmed positive test result is grounds for . . . disciplinary action up to and including immediate termination." On January 31, 1997, Appellant also signed an acknowledgment that she had received the Carroll County School Bus Contractor's Drug and Alcohol Policy, that she understood she could be subject to random drug testing, and that she understood she could be disciplined or terminated for testing positive.

Appellant submitted to a random drug test on January 25, 1999. The test consisted of a urinalysis sample collection at the Immediate Care Medical Center. On January 29, 1999, the Carroll County Public School Pupil Transportation Office was notified that Appellant's sample had tested positive for marijuana. Based on the confirmed positive drug test results, James L. Doolan, the Supervisor of Pupil Transportation, declared Appellant permanently disqualified to drive a school bus in Maryland. Appellant was advised of this finding by letter dated January 29, 1999.

On February 1, 1999, Mr. Doolan held a conference with Appellant concerning her disqualification from driving a school vehicle. At the conference, Appellant presented a letter from her husband stating the following:

This is totally all my fault, the reason Elaine had pot in her system is because I made a batch of marijuana cookies and somehow they got mixed up. I don't know how it happened I only know I messed up really bad. Elaine always hated the fact that I smoked pot but she really didn't care very much as long as it didn't affect her life.

By letter dated February 11, 1999, Mr. Doolan advised Appellant that "based upon [her] positive drug test as confirmed by the approved laboratory, [her] decertification will remain."

On appeal, the matter was reviewed by the superintendent's designee, who upheld the decision to disqualify Appellant as a school bus driver based on the verified positive result of the random drug test. He found that Mr. Doolan acted in accordance with State regulations and that Appellant had not satisfied the State's conditions for return to service.

Appellant further appealed to the local board. In an opinion issued July 14, 1999, the local board upheld Appellant's disqualification as a school bus driver, stating in part:

The local board is a strong proponent of compliance with all laws and regulations. It has taken a vocal stand against illegal drug use and abuse and believes that it is imperative for the safety of students and the public that school bus drivers be drug free. The local board fully supports the State's efforts to insure that persons driving school vehicles are drug free. Ms. Reed was well aware of the local board's policy against drug use and was also well aware that she was subject to random drug testing.

## ANALYSIS

Based on our review of the record, we believe that the local board acted as required by law in this matter. COMAR 13A.06.07.08B requires each local school system to administer random drug tests to its school vehicle drivers.<sup>1</sup> COMAR 13A.06.07.08-1B(h) provides that school vehicle drivers "shall be disqualified from operating a school vehicle in Maryland" for "testing positive for controlled substances on a test required under the regulation." Additionally, COMAR 13A.06.07.08-1D explains the requirements that must be satisfied for a disqualified school vehicle driver to return to service. Among other things, the regulation requires that the individual be free of controlled substances for at least ten years. COMAR 13A.06.07.08-1D(c). The State Board has previously upheld the disqualification of a school bus driver employed by a

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<sup>1</sup>Drug testing procedures must meet or exceed the standards established by the United States Department of Transportation set forth in Title 49 of the Code of Federal Regulations, Parts 40 and 382, which are incorporated by reference into the Code of Maryland Regulations. See COMAR 13A.06.07.08 and 08-1.

private contractor due to student safety concerns. *Hyman Blumenstock v. Board of Education of Howard County*, 7 Op. MSBE 730 (1997).

Here, the local board acted in accordance with the mandates of State regulation. It is undisputed that Appellant tested positive for marijuana during the random drug testing required by the local school system. Clearly, Appellant was aware of the school system's drug policy, as well as the penalties for a confirmed positive test result. Although Appellant claims that she did not knowingly ingest marijuana, the mandatory language of COMAR 13A.06.07.08-1 does not require that she possess knowledge of her use of the controlled substance for purposes of disqualification. Even if the State Board assumed that the facts asserted by Appellant are true, Appellant knowingly permitted her husband to bring and use illegal drugs in her home, thereby risking negative consequences to herself and placing school children in danger.<sup>2</sup>

Appellant further maintains that she has satisfied all requirements for her return to service. However, having tested positive for marijuana on January 25, 1999, Appellant is not eligible for return to service as she has not been free of controlled substances for a period of ten years as required by law. While Appellant has submitted a "Last Chance Agreement," albeit unsigned, the agreement purports to be a document that would be between Appellant and her private contractor employer. The "Last Chance Agreement" has never been approved for use by the Carroll County Public Schools. *See* Affidavit of James L. Doolan. Furthermore, even if the agreement had been executed between the school system and Appellant, it would be invalid as a violation of State law. The document thus has no bearing on the issue before the State Board.

## CONCLUSION

For these reasons we find that the local board did not act arbitrarily, unreasonably or illegally in this matter. We therefore affirm the decision of the Board of Education of Carroll County.

Edward Andrews  
President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

Reginald Dunn

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<sup>2</sup>The day that Appellant tested positive for marijuana was a school day on which Appellant had operated a school bus.

George W. Fisher, Sr.

Marilyn D. Maultsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

February 1, 2000