

VALERIE SHRYOCK,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-42

OPINION

In this appeal, a former teacher for the Carroll County Public Schools (“CCPS”) claims that the local board improperly denied her 79 days of retroactive Sick Leave Bank benefits for the period of May 14, 1998 through December 7, 1998. The local board decision was made following a full evidentiary hearing on this matter at the local level. In response to the appeal, the local board has filed a Motion for Summary Affirmance maintaining that its decision denying the benefits is consistent with its Sick Leave Bank policies and rules, and is therefore not arbitrary, unreasonable or illegal. Appellant has filed an opposition to the local board’s motion.

FACTUAL BACKGROUND

Appellant was a music teacher for the Carroll County Public Schools for approximately 13 years. Beginning in September, 1996 she became afflicted with various ailments and was often unable to work.¹ During the 1996-97 school year, Appellant applied for and received a series of Sick Leave Bank grants from March 24, 1997 through June 9, 1997.² These grants took Appellant through the end of the 1996-97 school year. Because it appeared to the Professional Sick Leave Bank Approval Committee that Appellant’s health might not be improving, the Committee directed Appellant to seek disability retirement benefits by contacting the CCPS Personnel Department, and that failure to do so would result in denial of further consideration of Sick Leave Bank grants for the next school year.

¹Among other things, these ailments included chronic fatigue syndrome, depression, mood disorder, aches, pains, noise intolerance, and various allergies. Tr. at 6. The parties do not dispute that Appellant is now disabled and unable to work.

²The Sick Leave Bank was created as a result of collective bargaining negotiations between the local board and the Carroll County Education Association (“CCEA”), the exclusive collective bargaining representative of the local board’s professional employees. Pursuant to the negotiated agreement, a Rules Committee was formed for the purpose of developing criteria for eligibility, enrollment, contributions, and use. The purpose of the Sick Leave Bank is to provide paid sick leave to members of the Sick Leave Bank. Appellant is a member of the Sick Leave Bank. Decisions by the Sick Leave Bank are appealable to the local board pursuant to provisions in the collective bargaining agreement.

Appellant responded by contacting Steven Guthrie, Personnel Specialist for CCPS,³ and advising him that she did not have a final diagnosis from her doctors that she was totally and permanently disabled. She also indicated her desire to return to work. Tr. at 57-58. Based on this information, Mr. Guthrie indicated that an application for disability retirement “would not be prudent.” Tr. at 87. Mr. Guthrie confirmed this conversation in writing by letter to Appellant dated June 16, 1997. Appellant did not apply for disability retirement benefits at that time. Tr. at 59.

Thereafter, Appellant applied for and received another series of Sick Leave Bank grants for the 1997-98 school year totalling 180 days of leave grants. When it again appeared to the Committee that Appellant’s health might not be improving, she was advised on March 18, 1998 to seek disability retirement by submitting an application for disability with all supporting documents to the Department of Human Resources within 20 calendar days. When there was no movement by Appellant, the Sick Leave Bank repeated its request by letter dated April 8, 1998.

In response to the letters, Appellant met with Mr. Guthrie who gave her a packet of information with all the necessary forms for applying for disability retirement. Mr. Guthrie advised Appellant that the forms needed to be filled out with supporting documentation and that the packet needed to be returned in its entirety, and not piecemeal, to reduce the possibility of denial. Tr. at 61, 86. At that meeting, Appellant advised Mr. Guthrie that she had a final diagnosis from all of her doctors.

Appellant solicited the help of an attorney, a disability advocate, and members of her church to assist her with filling out her disability retirement forms and accumulating the necessary information for submission with the application for disability retirement benefits. Over the course of a few months, Mr. Guthrie spoke to Appellant and several of her representatives and advised Appellant to submit the disability retirement forms.

In September 1998, Appellant advised Mr. Guthrie that she was having problems preparing her disability retirement forms. Tr. at 95. Appellant had not received any Sick Leave Bank grants since the conclusion of the 1997-98 school year. Rather, for the 1998-99 school year, Appellant was receiving other benefits consisting of 13 days of sick leave, one three-hundredths pay, and disability insurance.⁴

³The June 4, 1997 letter from the Committee advised Appellant to begin the process of applying for benefits by meeting with Mr. Guthrie prior to June 15, 1997.

⁴In addition to the Sick Leave Bank, an employee receives 13 days of sick leave per year, has the opportunity to pay premiums to receive long-term disability insurance benefits with a private insurer, and may receive one three-hundredths of his/her pay to a maximum of 80 days. These benefits are cumulative, but not simultaneous. A grant from the Sick Leave Bank provides more compensation to an employee because the employee receives 100 percent pay through such

On January 4, 1999, Mr. Guthrie advised Appellant that her leave was exhausted and that she was being put on unpaid medical leave of absence effective January 11, 1999. On January 11, 1999, Appellant submitted her application for disability retirement benefits. Her accompanying letter to Mr. Guthrie stated that her “desire is to first receive any potential Sick Bank grants before [she is] placed on a qualifying leave of absence and before [she] receive[s] disability retirement, if approved.”

At that time, Appellant also submitted a request for a Sick Leave Bank grant for her absence during the 1998-99 school year. Her application was initially denied for failure to comply with the requirement that she file her application for disability retirement with the CCPS Department of Human Resources within 20 calendar days of the date requested by the Committee. Appellant appealed the denial. The Committee reviewed the matter and awarded Appellant a Sick Leave Bank grant from December 7, 1998 through January 21, 1999, but not for days prior to that time. The decision of the Professional Sick Leave Bank Approval Committee states as follows:

According to page 8 of the rules, all requests must be made ‘within 30 calendar days of the first date Bank usage is requested.’ Your first request for the 1998-99 year was submitted on January 6. The beginning of your grant is based on 30 calendar days prior to that date. The grant continues up to your February 1, 1999 retirement date. This grant was approved because of the change in your retirement date and calculated using the guidelines for timely filing; however, subsequent grant requests for days prior to December 7, 1998 will not be considered because you did not meet the requirements of the Committee for submitting your disability retirement application to the Department of Human Resources within the 20 days indicated in the rules.

See memorandum to Appellant from Professional Sick Leave Bank Approval Committee dated May 5, 1999.

Appellant appealed the decision to the local board. The matter was assigned to a Hearing Examiner for further review and a full evidentiary hearing was held on December 10, 1999. Hearing Examiner Gregory A. Szoka recommended that Appellant be denied the additional 79 days of sick leave benefits.

In a unanimous decision, the local board adopted the recommended decision of the Hearing Examiner. In its decision, the local board stated:

The Board has reviewed the transcript of the evidence presented

a grant. *See* Hearing Examiner’s Report at 2.

and considered Ms. Shryock's legal arguments that impossibility of performance and waiver by the school system administrators should excuse her delay in submitting the disability retirement paperwork. We find no merit in those arguments and note that the Appellant was able to complete the disability retirement forms once notified of a change in her leave status. We agree with the hearing examiner that 'the decision of the Sick Leave Bank is consistent with its expressed policy', and conclude that the regulations of the Sick Leave Bank were interpreted fairly and reasonably in Ms. Shryock's case. Testimony at the hearing indicated that in two other cases, the Sick Leave Bank's Approval Committee had only granted 30 days of leave in response to employees' requests for retroactive sick leave benefits. We find no arbitrariness or unreasonableness in the interpretation made by the Sick Leave Bank.

See Local Board Decision at 2.

ANALYSIS

Because this is an appeal involving a local policy or dispute regarding the rules and regulations of a local board, the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.01.03E(1)(a).

The CCPS Employee Sick Leave Bank rules provide as follows:

Disability Retirement - When the Approval Committee reasonably believes that an applicant for a grant or an extension of a grant may be eligible for disability retirement benefits from the Maryland State Retirement Systems and/or Social Security, the Approval Committee will require the employee to apply for disability benefits. If disability retirement is approved, the member must pursue the earliest possible retirement date. If the physician indicates that the member is able to return to his/her regular duties, the member is no longer eligible for a Sick Leave Bank grant. **Submission of the application for disability retirement and the necessary supporting medical documents to the Department of Human Resources⁵ must be made within 20 calendar days from the date of the issuance of the request by the Approval Committee in order for the member to continue to be eligible for a Sick Leave Bank grant.** (Emphasis added).

⁵The 1997-98 Sick Leave Bank policy specifies the Personnel Department. That department is now the CCPS Department of Human Resources.

Appellant admits that she failed to submit the disability retirement application within the required 20 day period, but argues that she relied to her detriment upon the direction of Mr. Guthrie that she could not apply for further sick leave grants during the time that her retirement application was being assembled. She claims that if she had been advised that she could seek a waiver, she would have requested relief from the 20 day rule given that she was unable to accumulate the necessary information within that time frame and would have been eligible to apply for a sick leave grant from the Bank. Additionally, she claims that the fact that the Bank had previously waived strict compliance with the Sick Leave Bank policy supports her assumption that the policy would be waived again.

It is hard to understand Appellant's claim that she relied to her detriment upon the direction of Mr. Guthrie regarding applying for further sick leave grants. Appellant did not present any evidence during the hearing before the hearing examiner to support this position. Appellant testified that it was her understanding that disability retirement forms would have to be submitted before any further grants could be awarded, not that failure to provide the documentation would preclude her from eligibility for further Sick Leave Bank grants. Tr. at 62-63. There is no evidence in the record to suggest that her novel interpretation came from anyone other than Appellant. The Sick Leave Bank rules are clear: a member is ineligible for a Sick Leave Bank grant if the application for disability retirement and supporting medical documents are not submitted within 20 days of the request. There is no indication in the record that Appellant ever communicated confusion or misunderstanding regarding the policy, or that she ever sought clarification. Moreover, Appellant had a copy of the Sick Leave Bank policy for the 1997-98 school year and was also represented at that time by legal counsel.⁶

Appellant also claims that it was impossible for her to accumulate the necessary documentation within the 20 day time period. The record discloses however that neither she, her attorney, or other representatives discussed problems regarding assembling the necessary information for the application until September, 1998, when she mentioned something to Mr. Guthrie, well after the 20 day period had expired. The record further discloses that Mr. Guthrie repeatedly urged Appellant to make the necessary submissions. It was incumbent upon Appellant to respond within the designated time frame or to communicate to Mr. Guthrie in a timely fashion problems she was experiencing with compliance.

In summary, we find that the record in this case is replete with evidence supporting the local board's determination.⁷ We concur with Hearing Examiner Szoka who stated,

⁶The parties agreed that the Sick Leave Bank policies for the 1997-98 and the 1998-99 school years were essentially identical except for minor changes that do not impact this case.

⁷To the extent that there is contradictory evidence in the record, it is well established that determinations concerning credibility are within the province of the local board as trier of fact. *See, e.g., Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence. Where conflicting

I am persuaded that the decision of the Sick Leave Bank was consistent with its expressed policy. Clearly, the Disability Retirement Section of the Policy precludes the 'eligibility' of a member for a grant if the disability application was not made within the twenty-day period. Until the employee completes this prerequisite, that employee is no longer qualified. Although not perfectly clear, this provision, rather than making a member ineligible in perpetuity, is to be read, based upon the interpretation afforded to it by the Sick Leave Bank Board, that eligibility is restored once the documentation is completed. Having restored Ms. Shryock's eligibility after verification that disability retirement forms had been filed in January, 1999, the grant request could be processed and the Sick Leave Bank award of a sick leave grant for a period of time not more than thirty (30) days preceding the date of the request is consistent with the 'Grant Requests' Section of the 1998-1999 CCPS Employee Sick Leave Bank booklet.

Hearing Examiner Report at 6-7.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Carroll County denying Appellant's request for a 79 day retroactive grant from the Sick Leave Bank.

Philip S. Benzil
President

Marilyn D. Maulsby
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Reginald L. Dunn

George W. Fisher, Sr.

inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences.");
Board of Education v. Paynter, 303 Md. 22, 36 (1985)(same).

Walter S. Levin, Esquire

Judith A. McHale

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

September 26, 2000