CARL WILLIAMSON,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 01-28

OPINION

In this appeal, Appellant, a probationary teacher for Prince George's County Public Schools, challenges the local board's decision to terminate him from employment for misconduct in office and incompetence based on falsifying information on his employment application documents. The matter was referred to the State Office of Administrative Hearings where, following a hearing on the appeal, the Administrative Law Judge ("ALJ") issued a proposed decision on May 31, 2001, a copy of which is attached to this opinion as Exhibit 1. The Appellant filed objections, and oral argument was heard by the State Board of Education on July 24, 2001.

Having reviewed the record in this matter including the objections of Appellant, and after considering the arguments of counsel, we adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge. For the reasons stated by the ALJ, we affirm the decision of the Board of Education of Prince George's County to terminate Appellant for misconduct in office and incompetence based on falsifying information on his employment application documents.

Raymond V. Bartlett
President

Marilyn D. Maultsby
Vice President

JoAnn T. Bell

Philip S. Benzil

Reginald L. Dunn

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

August 29, 2001

EXHIBIT 1

CARL WILLIAMSON	*	BEFORE FRANKLIN M. WARD
APPELLANT	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE OF
PRINCE GEORGE'S COUNTY	*	ADMINISTRATIVE HEARINGS
PUBLIC SCHOOLS	*	
		OAH NO. MSDE-BE-01-200100002
	*	

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On or about October 4, 1999, Appellant, a teacher in the Prince George's County Public Schools ("PGCPS"), received notice from the schools' Superintendent that unless Appellant requested "to be heard," the Superintendent would recommend to the Prince George's County Board of Education ("PGCBE") that Appellant be discharged from his teaching position because he had falsified his employment application.

Appellant requested a hearing and a hearing was conducted before a hearing examiner on January 27, 2000. After the hearing, the Examiner recommended Appellant's discharge. The PGCBE issued an order on October 26, 2000, after hearing oral arguments on October 12, 2000, discharging Appellant and Appellant appealed that order to the Maryland State Board of Education ("MSBE") on November 20, 2000. The MSBE referred the matter to the Office of

Administrative Hearings ("OAH") for a hearing.A hearing was conducted at the OAH, Hunt Valley, Maryland, on April 17, 2001, pursuant to Md. Code Ann., Educ. §§ 2-205 and 6-202 (1999); and Code of Maryland Regulations ("COMAR") 13A.01.01.03M; before Administrative Law Judge Franklin M. Ward. Present on behalf of the PGCPS was Mr. John Robinson, Labor Relations Team Leader. The PGCPS was represented by Sheldon Gnatt, Esq. Appellant was present and represented himself.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 and Supp. 2000); COMAR 13A.01.01.03P; and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01.[1]

ISSUE

The issue is whether the PGCBE decision to terminate Appellant was proper.

SUMMARY OF THE EVIDENCE

Exhibits:

The PGCPS submitted the following exhibits, which were admitted into evidence:

Agency Ex. #1 Transcript of January 27, 2000 hearing.[2]

Agency Ex. #2 Application for Professional Position, dated June 6, 1999.

Agency Ex. #3 State of Maryland, Department of Public Safety and Correctional

[1] The current OAH regulations are published at 27:26 Md. Reg. 2360 (Dec. 29, 2000, effective Jan. 8, 2001) (proposed 27:18 Md. Reg. 1678-1684 (Sept 8, 2000) (to be codified at COMAR 28.02.01).

[2] The transcript contained several typographical errors, which were corrected in pen and ink by me at the hearing, with the concurrence of the parties.

Services criminal history record check, dated September 1, 1999, and PGCPS Superintendent letter to Appellant, dated October 4, 1999.

The Appellant did not submit any exhibits.

Testimony[3] :

Mr. John Robinson testified on behalf of the PGCPS.

Appellant testified on his own behalf.

FINDINGS OF FACT

After considering the evidence of record, I find by a preponderance of the evidence the following facts:

1. Appellant, a college-education teacher, applied for a teaching position with PGCPS on or about June 22, 1999.
2. As part of the application process, Appellant completed a criminal history disclosure statement, which contained the question: "Have you been convicted of a crime (excluding non-jailable traffic offense)?" The question required a "YES" or "NO" answer; Appellant checked the "NO" block for that question.
3. The form contained, just above the space for signature, the following: "I DO SOLEMNLY DECLARE OR AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE INFORMATION IS TRUE AND

[3] During the pre-hearing conference, conducted by phone on March 13, 2001, the parties agreed that the January 27, 1999 hearing transcript would be used in lieu of testimony; however, the parties were advised by me, without objection, that they could supplement their testimony at the hearing. At the January 27, 1999 and April 17, 2001 hearings, both Appellant and Mr. Robinson testified.

CORRECT AND THAT I AM THE APPLICANT WHOSE SIGNATURE APPEARS BELOW. I UNDERSTAND THAT MISREPRESENTATION OR OMISSION OF FACTS CALLED FOR IS CAUSE FOR DISMISSAL AND THAT FAILURE TO DISCLOSE THE ABOVE INFORMATION CONSTITUTES PERJURY." Appellant signed the form.

4. The form contains the statement: "If you answered "YES" to any of the above questions, explain in detail the specifics of the convictions(s) and/or disposition(s)."

5. At some point after Appellant's arrest on February 11, 1995, Appellant was convicted in the District Court of Maryland for Prince George's County of malicious destruction of property with a value of less than $300.00, a misdemeanor. He was sentenced to 60 days incarceration, with all but five days suspended. At some point after Appellant's arrest on March 29, 1996, Appellant was convicted of battery, also a misdemeanor, in the same Court. He was sentenced to one-year incarceration, with all but one month and nine days suspended. Both of these incidents involved actions against Appellant's father, with whom Appellant was living at the time, and both of the convictions were entered prior to Appellant applying for a position with the PGCPS.

6. At some point between June 22, 1999 and August 9, 1999, Appellant started working for PGCPS as a teacher.

7. On August 9, 1999, during orientation, Appellant completed another criminal history disclosure statement form. That form contained the same questions and statements as the form dated June 22, 1999 and Appellant answered the

questions in the same manner that he answered the June 22, 1999 form, and signed the same statement.

8. When the PGCPS Superintendent learned of the two convictions, she directed her Executive Assistant to meet with Appellant for the purpose of giving Appellant an opportunity to respond to the allegations that he falsified his application. Mr. Robinson was also present for the meeting. After the meeting, the Executive Assistant and Mr. Robinson recommended Appellant's termination.

9. After receiving the recommendation of the Executive Assistant and Mr. Robinson, the Superintendent informed Appellant of her decision to terminate his employment on the grounds of misconduct and incompetency.

10. Appellant requested a hearing and a hearing was convened on January 27, 2000.

11. The hearing examiner who presided at the January 27, 2000 hearing recommended that the Superintendent's decision to terminate Appellant be upheld. After oral argument before the PGCBE on October 12, 2000, that body upheld Appellant's termination.

12. Appellant appealed his termination to the MSBE on November 20, 2000.

DISCUSSION

The authority to discharge a teacher is found in Md. Code Ann., Educ. §6-202 (1999), which provides, in pertinent part:

> (a) *Grounds and procedure for suspension or dismissal.*---(1) On the recommendation of the county superintendent, a county board may

suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

i (i) Immorality;

ii (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of §5-704 of the Family Law Article;

(iii) Insubordination;

iii (iv) Incompetency; or

iv (v) Willful neglect of duty.

….. ….. ….. ….. …..

The standard of review in an appeal of a teacher dismissal case to the MSBE is prescribed by COMAR 13A.01.01.03E, which, in pertinent part, provides:

..… ….. ….. ….. …..

E. Standard of Review.

….. ….. ….. ….. …..

(3) Teacher Dismissal and Suspension.

(a) The standard of review in teacher dismissal or suspension actions shall be *de novo* as defined in §E(3)(b).

(b) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain a disciplinary infraction.

(c) The county board shall have the burden of proof.

(d) The State Board, in its discretion, may modify a penalty.

….. ….. ….. ….. …..

Because this appeal involves a termination action taken by the County Board, it has the burden of proof. In reaching this proposed decision, I have considered the transcript of the January 27, 2000 hearing, as well as the application for a professional position and the criminal history record check and the testimony presented at the April 17, 2001 hearing. The County Board has met its burden.

The transcript (denoted as "T" below) of the January 27, 2000 hearing is very telling. In that hearing, Appellant freely admitted that he had been convicted of the two misdemeanors noted above. (T.18) However, he denies that those convictions were for crimes. (T.22) His position is that crimes are "murder, rape, sodomy, or any kind of offense against---you know, that involves like robbing stores or something like that." (T.24) It is inconceivable that a college-educated person, such as Appellant, would not believe that battery and malicious destruction of property would not qualify as crimes. Even if, in some unexplainable way, he believed that these crimes were not crimes before he was convicted, he certainly knew they were later when he was sentenced, and actually spent some time in jail. Does he really believe that the justice system sends people to jail who have not committed a crime? I doubt that he does.

Other parts of the transcript reveal Appellant's real belief. At one point Appellant testified that he was not aware "that they [meaning the courts] were going to keep records of this. If I had of known, I would have filed for an expungement a long time ago, you know." (T.24) And, "I thought that these little minor incidents like this would be just sort of listed, and they wouldn't come up unless you had more, you know." (T.29) These comments reveal that Appellant did not believe that a criminal records check would reveal the convictions. In the simplest of terms, he lied under oath on the application forms because he thought he could get away with it.

Appellant was discharged from employment on the grounds of misconduct and incompetency. I do not find incompetency in what has been presented to me. However, I do find misconduct. "Misconduct" is defined in *Black's Law Dictionary*, (Rev. 4th Ed., 1968) as "[A] transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior…." *Black's* defines "misconduct in office" as "any unlawful behavior by a public officer in relation to the duties of his office, willful in character"

In *Rogers v. Radio Shack*, 271 Md. 126, 132, 314 A.2d 113 (1974), the Maryland Court of Appeals noted that misconduct is "a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship…."

There can be no doubt that, at the very least, Appellant's acts in lying under oath on two forms were forbidden acts, improper, wrong and willful in character. They were also unlawful in that the forms were signed under oath. Although Appellant had not been hired at the time he completed the first statement on June 22, 1999, completing that statement was in the course of the employment relationship because that form was part of the application process to obtain

employment. To hold otherwise would mean that nothing an applicant had ever done before, no matter how serious, could be considered by an employer when deciding whether to hire an applicant for any job. By the time Appellant signed the second form he had been hired.

Because Appellant lied on two forms, there was also a course of wrongful conduct. The forms he completed improperly could hardly be more specific. The forms required honest and accurate answers concerning Appellant's past criminal behavior. Clearly, there was misconduct here. Appellant knowingly lied on his application and deliberately kept from his employer important information that the employer should have had before making a decision to hire Appellant.

However, in *Rester v. State Bd. of Educ.*, 284 Md. 537, 557, 399 A.2d, 225, cert. denied, 444 U.S. 838, 100 S. Ct. 74, 62 L.Ed. 2d 49 (1979), the Maryland Court of Appeals held that the grounds for dismissal of a teacher must bear on the teacher's fitness to teach. Does lying on a job application bear on a person's fitness to teach? I hold that it does.

The *Rester* court noted *Emp. Security Board v. LeCates*, 218 Md. 202, 208, 145 A.2d 840 (1958), an unemployment insurance compensation matter, which held that an employee should not commit acts which are deliberate violations and disregards of standards of behavior that the employer has a right to expect of it employees. Lying about past criminal behavior is both a deliberate violation of the application process and a deliberate disregard of the standards of behavior that the employer in this case, PGCPS, has a right to expect.

Any school in hiring teachers should have the opportunity to assess the applicants fully. If an applicant has a criminal history, the school officials may believe that he/she is not qualified to provide the proper atmosphere for the students. On the other hand, if the criminal convictions are relatively minor and no moral turpitude is involved, a school may decide to hire the applicant in

spite of the convictions. It should be noted that in the present case, Appellant was not discharged because he had two misdemeanor convictions. Rather, he was discharged because he lied under oath about those convictions. Lying, especially under oath, should not be tolerated in a teacher. Teachers do more than just teach. They are often people whom students emulate. There is always the possibility that the students may learn that his or her teacher has lied under oath. Certainly, that would impact negatively on a teacher's fitness to teach. There is also the question of whether the employer, knowing of the false statements, would feel comfortable having Appellant in a position of trust, which every teaching position is.

Based on the application forms concerning criminal history, it is clear that a conviction of a crime does not automatically mean that an applicant will not be hired. These forms contain a space for the applicant to explain the specifics of the convictions and/or dispositions. If the PGCPS hiring officials were going to deny employment to every teacher applicant who had been convicted of a crime, it would not need the space on the form for an explanation. Therefore, had Appellant listed the two convictions, there is at least a possibility that he would have been hired in spite of the convictions. However, we cannot say for certain whether or not he would have been hired. Unfortunately, Appellant did not give the hiring officials the opportunity to determine if the convictions were of such a serious nature that Appellant should not have been hired.

It is also noteworthy that Appellant had two chances to set the record straight. First, he could have and should have completed the June 22, 1999 statement correctly. Second, even if he failed to list the convictions on the June 22 statement, he could have done so on the August 8, 1999 statement. The fact that he did not is evidence of his belief that the record check would not reveal the convictions.

In all Maryland administrative matters involving hearings, unless otherwise imposed by constitution, statute or regulation, which is not the case here, the burden of proof is met when the party having the burden establishes its case by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (1999 & Supp. 2000). There is no doubt that the PGCPS has met that burden and was correct in discharging Appellant.

It may be that Appellant is an outstanding teacher in that he gets his subjects across to the students. However, that is of little consequence if there is a question about his honestly, which certainly there is.

COMAR 13A.01.01.03E.(3)(d) provides that the MSBE may modify a penalty. I do not believe this case, due to the seriousness of Appellant's conduct in lying under oath, warrants modification.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that Appellant was properly dismissed from employment as a teacher with the Prince George's County Public Schools for misconduct in office, in accordance with Md. Code Ann, Educ. § 6-202 (a) (1999).

PROPOSED ORDER

I **PROPOSE** that the decision of the Prince George's County Board of Education to dismiss Appellant from his employment with the Prince George's County Public Schools for misconduct in office be **UPHELD**.

May 31, 2001

Franklin M. Ward
Administrative Law Judge