

AMY HEGER,
Appellant

v.

SOMERSET COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 17-11

OPINION

INTRODUCTION

The Appellant, a teacher with Somerset County Public Schools, filed an appeal of the decision of the Somerset County Board of Education (local board) to (1) suspend her without pay for five work days; (2) require her to attend a substance abuse counseling session; and (3) remove her as the 2015-16 Teacher of the Year representative for the Somerset Promise Academy. The local board took these actions after determining that the Appellant had committed misconduct in office when she consumed alcoholic beverages at lunch during an in-service work day.

We transferred the case pursuant to COMAR 13A.01.05.07(A)(2) to the Office of Administrative Hearings (OAH) for review by an Administrative Law Judge (ALJ). On January 4, 2017, the ALJ issued a proposed decision recommending that the State Board uphold the local board's decision suspending the Appellant from her teaching position. The ALJ did not rule on the substance abuse counseling issue or Teacher of the Year representative issue, finding that she lacked authority to do so based on the delegation authority conferred on OAH through the State Board.¹

The Appellant did not file any exceptions to the ALJ's proposed decision.

FACTUAL BACKGROUND

The factual background in this case is set forth in the ALJ's proposed decision, Findings of Fact, pp.4-6.

STANDARD OF REVIEW

For suspensions of certificated employees pursuant to §6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the suspension. COMAR 13A.01.05.05F.

¹ We delegated the case to OAH pursuant to COMAR 13A.01.05.07(A)(2) which requires the State Board to transfer to OAH appeals of certificated employee suspensions or dismissals made pursuant to §6-202 of the Education Article.

For decisions involving a local policy, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A. A decision is arbitrary and unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion the local board reached. COMAR 13A.01.05.05B.

The State Board transferred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. *See* Md. Code Ann., State Gov't §10-216. In reviewing the ALJ's proposed decision, the State Board must give deference to the ALJ's demeanor based credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

LEGAL ANALYSIS

The ALJ found substantial evidence in the record to support Appellant's suspension for misconduct in office for consuming alcohol during work hours. We concur with the ALJ's analysis. (Proposed Decision at pp.7-12). The ALJ concluded that Appellant's consuming alcohol while on duty was misconduct in office. Even though this incident occurred on an in-service day, such conduct undermines Appellant's future classroom performance and overall impact on students because it calls into question her decision-making ability and raises concerns that she might repeat the behavior when students are in school. Appellant's contention that she believed that the drinks were non-alcoholic is contradicted by the record and was not found to be a credible claim by the ALJ. Accordingly, we adopt the ALJ's Proposed Decision and affirm the local board's suspension of the Appellant.

With regard to the local board's decision requiring the Appellant to attend a substance abuse counseling session and to remove her as the school's representative for Teacher of the Year, we do not find such actions to be arbitrary, unreasonable or illegal in light of the record and given our determination that the Appellant committed misconduct in office.

CONCLUSION

For the reasons stated above, we adopt the decision of the ALJ and affirm the local board's decision suspending the Appellant for five work days without pay. In addition, we affirm the local board's decision to require the Appellant to attend a substance abuse counseling session and to remove her as the school's 2015-16 Teacher of the Year representative.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Laurie Halverson

Stephanie R. Iszard

Rose Maria Li

Barbara J. Shreeve

Madhu Sidhu

Guffrie M. Smith, Jr.

Laura Weeldreyer

February 28, 2017