

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>ELIZABETH WEISSINGER,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2008-04</b>
	:	
<b>THOMAS COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Elizabeth Weissinger (Appellant) from a decision by the Thomas County Board of Education (Local Board) not to renew her teaching contract for the 2007-2008 school year after finding her guilty of continually falling asleep in her office. Appellant claims that she did not intentionally fall asleep because she suffers from sleep apnea, and the Local Board's decision was arbitrary and capricious. The Local Board's decision is sustained.

The Local Board employed Appellant for seven years as a psychologist. On August 31, 2006, Appellant was observed sleeping at her desk. Appellant's principal gave her a written warning that sleeping on the job was unacceptable behavior that could result in termination of her employment. Appellant claimed that she was not sleeping but had her eyes closed because she had a headache. Appellant was observed sleeping again on January 17, 2007, and on February 1, 2007. Following the January 17, 2007, incident, the Local Superintendent met with Appellant to discuss her sleeping on the job and Appellant claimed that there was nothing wrong with her and there was no medical reason for her sleeping. The Superintendent warned her that sleeping on the job could result in termination of her contract.

Appellant was observed sleeping again at her desk on March 16, 2007. The Local Superintendent met with Appellant on March 22, 2007, and told her that her contract would not be renewed. Appellant said that she did not have any reasons to explain why she was sleeping. The Local Superintendent gave Appellant notice that her contract would not be renewed because of insubordination and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant requested a hearing on the charges.

During the hearing, Appellant did not deny that she had been sleeping. Instead, she claimed that she was unaware that she was falling asleep because she was suffering from sleep apnea, which she compared to someone who was suffering from diabetes. Appellant claimed she was unaware of her condition until after she received word that her

contract would not be renewed and she went to a doctor. She claimed that since she has been undergoing treatment, her problems no longer exist. Additionally, she presented evidence that despite her sleep lapses, she was able to complete all of her assigned tasks as a psychologist in the school.

Appellant claims that her sleeping on the job was not willful and she was not, therefore, insubordinate, which requires the “willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation or order issued by the school board or an administrative superior.” *Woods v. Fulton Cnty. Bd. of Educ.*, Case No. 1991-13 (Ga. SBE, June 13, 1991). Appellant also asks the State Board of Education to interpret O.C.G.A. § 20-2-940(a)(8), which permits termination or non-renewal for “[a]ny other good and sufficient cause”, as also requiring an element of willfulness to support termination or non-renewal.

"The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

Although Appellant argues that her falling asleep was non-volitional, thus negating any intent, there was evidence from which the tribunal could find that she intentionally failed to obey the directions of her principal and her superintendent not to sleep on the job. It was the duty of the tribunal to determine if Appellant had the intent to be insubordinate. “The intention with which an act itself is done is peculiarly a question for the jury.” *Johns v. Ridley*, 245 Ga. App. 710, 712, 537 S.E.2d 746, 749 (2000), *rvsd. on other grounds*, *Ridley v. Johns*, 274 Ga. 241, 552 S.E.2d 853 (2001). When questioned by the Local Superintendent, Appellant stated that there was nothing medically wrong with her and she did not take any steps to inquire about why she was falling asleep. When the Local Superintendent informed her that her contract would not be renewed, Appellant stated that she did not have any defense. It was not until the hearing on the charges that Appellant claimed that she was suffering from sleep apnea. The evidence that Appellant submitted, a letter from a doctor, to support her claim, however, was equivocal in stating that the sleep apnea “could cause her to be ... sleepy during the day.” Additionally, the letter stated that, “...this is potentially a medical problem....” The tribunal, therefore, could find that the sleep apnea was not the cause of Appellant’s problem, or the tribunal could find that Appellant’s insistence that she did not have a problem and her failure to take measures to determine if she had a medical condition that caused the sleeping constituted willful behavior to disobey the instructions of her superiors. The State Board of Education concludes that there was some evidence to support the Local Board’s decision.

Appellant also claims that the Local Board erred in finding other good and sufficient cause not to renew her contract because she did not have any intent to fall

asleep. Assuming, arguendo, that some degree of intent is necessary to support a charge of “other good and sufficient cause”, which Appellant has not established, the Local Board could find that such intent existed for the same reasons previously set forth, i.e., there was no reliable evidence that sleep apnea was the cause of Appellant’s problem, Appellant denied she had a problem, and Appellant failed to take any corrective action despite warnings from both her principal and her superintendent. It is, therefore, unnecessary to decide whether intent is required to support a charge of “other good and sufficient cause”.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board’s decision. Accordingly, the Local Board’s decision is  
SUSTAINED.

This \_\_\_\_\_ day of October 2007.

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Wanda T. Barrs  
Chair, State Board of Education