

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

ANTONIO MAHONE,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-77
	:	
CLAYTON COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by Antonio Mahone from a decision by the Clayton County Board of Education (“Local Board”) to terminate his employment contract based upon Appellant’s improper use of a day of sick leave and his failure to report his misdemeanor guilty plea to the Local Board as required under his employment contract. The Local Board terminated Appellant’s employment contract pursuant to O.C.G.A. § 20-2-940(a) on the grounds of insubordination, willful neglect of duty, and other good and sufficient cause.

Appellant asserts three primary errors on appeal: (1) the Local Board erred because Appellant was not issued a new contract for the 2009-2010 school year, (2) the Local Board erred because the hearing officer issued the decision instead of the hearing tribunal, and the decision was not issued within five (5) days as required by O.C.G.A. § 20-2-940(f), and (3) the Local Board’s decision is not supported by the evidence and the decision is arbitrary and capricious. For the reasons set forth below, the decision of the Local Board is SUSTAINED.

I. PROCEDURAL BACKGROUND

On or about February 4, 2010, Appellant was notified that his annual contract for the 2009-2010 school year was being recommended for termination. Appellant appealed the termination of his employment contract. The Local Board provided the Appellant a hearing with the opportunity to present evidence. After hearing the evidence, the Local Board terminated Appellant’s employment contract. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. FACTUAL BACKGROUND

Appellant was employed by the Local Board for the 2009-2010 school year as a teacher at Clayton County Alternative School. The Local Board did not issue Appellant a new contract, but he continued to be employed for the 2009-2010 school year. The 2008-2009 employment contract required Appellant to report any felony or misdemeanor convictions to the Assistant Superintendent of Human Resources. On September 9, 2010, Appellant pled guilty to

misdemeanor charges of simple battery, simple assault, and disorderly conduct. On September 9, 2010, Appellant used sick leave for attending court when he entered his guilty plea to the misdemeanor charges. Appellant did not report the misdemeanor conviction to the Local Board.

At the hearing, Appellant admitted to using sick leave on the day he attended court to enter his guilty plea to the misdemeanor charges. Appellant further admitted that he did not report the misdemeanor conviction to the Assistant Superintendent of Human Resources. Appellant testified that he inadvertently used sick leave on the day he attended court. Appellant further testified that he was not aware that he needed to report the misdemeanor conviction to the Local Board.

III. ERRORS ASSERTED ON APPEAL

A. Issuance of a New Employment Contract.

The Local Board concluded that Appellant failed to report his misdemeanor conviction as required by his 2008-2009 employment contract. Appellant contends that he did not have a contractual obligation to report his misdemeanor conviction under his 2008-2009 employment contract because it did not apply to the 2009-2010 school year. Appellant's contention is based upon the Local Board's decision not to issue Appellant a 2009-2010 employment contract. Appellant does not dispute that he continued his employment for the 2009-2010 school year. Appellant further does not dispute that he was governed by the Fair Dismissal Act for the 2009-2010. To contend otherwise would mean this appeal before the Board would not be proper.

Official Code of Georgia Annotated § 20-2-942(b)(2) requires the Local Board to give written notice to a teacher if a local board intends to not renew the contract of a teacher. In this case, it is unclear, but it appears that Appellant was issued a notice of non-renewal by the Superintendent but the Local Board reinstated Appellant. Nevertheless, it is clear that Appellant's employment contract was renewed for the 2009-2010. The employment contract that was renewed is Appellant's 2008-2009 employment contract. Thus, Appellant's assertion that he did not have an employment contract for the 2009-2010 school year is without merit.

B. Compliance with O.C.G.A. § 20-2-940(f).

Appellant asserts that the Local Board erred because the hearing officer prepared the report and recommendation for the hearing tribunal. Official Code of Georgia Annotated § 20-2-940(f) requires the hearing tribunal to file its findings and recommendations with the local board. This provision does not require that the hearing tribunal draft the findings and recommendations. Each hearing tribunal member signed the findings and recommendations and submitted it to the Local Board. Thus, the hearing tribunal's decision is proper under O.C.G.A. § 20-2-940(f).

Appellant further contends that the hearing tribunal failed to render its decision within five (5) days of the conclusion of the hearing as required by O.C.G.A. § 20-2-940(f). The Local

Board contends that the decision was issued within five (5) days, excluding Saturday and Sunday. This Board agrees with the Local Board. See White v. Effingham County Bd. of Educ., Case No. 1996-42 (Ga. SBE, Nov. 1996) (holding the five (5) day requirement provided for in O.C.G.A. § 20-2-940(f) excludes Saturday, Sunday, and legal holidays). Thus, this assertion is without merit.

C. Record Evidence.

Appellant asserts that the evidence does not support the Local Board's decision. The State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976). For the reasons set forth below, the State Board finds that the record contains legally sufficient evidence to support the decision of the Local Board.

Insubordination requires the intentional or willful disregard of reasonable rules and regulations. Brawner v. Marietta City Bd. of Educ., 285 Ga. App. 10, 646 S.E.2d 89 (2007). A "willful neglect of duty" requires "a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. . . . '[W]illfulness' requires a showing of more than mere negligence." Terry v. Houston County Bd. of Educ., 178 Ga. App. 296, 342 S.E.2d 774 (1986). Appellant contends¹ that he was not aware of the policies regarding the use of sick leave and his use was inadvertent. Appellant also contends he was not aware of his obligation to report the misdemeanors. Appellant further contends that he did not intentionally fail to follow policy or report his misdemeanor conviction.

This Board finds that Appellant knew, or should have known, what his obligations were pursuant to his employment contract and under the Local Board's policy. This conclusion is supported by this Board's decision in Clemmons v. Chattooga County Bd. of Educ., Case No. 1998-27 (Ga. SBE, Sep. 1998). In Clemmons, this Board upheld the suspension without pay of a teacher who was charged with disseminating a copy of an ITBS. In Clemmons, this Board held that insubordination, willful neglect of duties, or other good and sufficient cause was met by what a teacher "should have known." See also Maria Beal-Parker v. DeKalb County Bd. of Educ., Case No. 2008-17 (Ga. SBE, Feb. 2008).

¹ Appellant argues that the Local Board's decision is incorrect because his misdemeanor plea did not involve crimes involving moral turpitude. However, Appellant's employment contract required him to report all misdemeanor convictions regardless of moral turpitude.

In this case, Appellant should have known that taking sick leave when he was in court to enter a guilty plea violated the Local Board's policies. Furthermore, Appellant should have known his obligations under his employment contract. Moreover, the hearing tribunal heard the evidence and was vested with the authority to weigh the credibility of the evidence. The record shows that Appellant used sick leave to go to court and enter a guilty plea to misdemeanor charges. The hearing tribunal could have reasonably inferred that Appellant did so for the purpose of concealing the misdemeanor convictions. While Appellant testified that he did not do so for this reason, the hearing tribunal weighed this evidence and concluded otherwise. This Board cannot second guess the weighing of the evidence by the hearing tribunal. Thus, the record contains evidence supporting the Local Board's decision that Appellant engaged in intentional and willful conduct, which was more than "mere negligence." For these reasons, this Board finds that the record contains sufficient evidence supporting the decision of the Local Board.

IV. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board and it is, therefore, SUSTAINED.

This ____ day of July 2010.

MARY SUE MURRAY
VICE CHAIRMAN FOR APPEALS