

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHIRLEY R. ALLEN,	:	
	:	
Appellant,	:	
	:	CASE NO. 1988-7
v.		
	:	
DEKALB COUNTY BOARD	:	DECISION
	:	
OF EDUCATION	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Shirley R. Allen (“Appellant”) from a decision by the Dekalb County Board of Education (“Local Board”) to dismiss Appellant from her position as an elementary classroom teacher for willful neglect of duty because she did not report for work at the beginning of the 1987-1988 school year. Appellant has appealed on the ground she is handicapped and the Local Board violated her rights under the Georgia Equal Employment for the Handicapped Code, O.C.G.A. §34-6A-1 et seq. The State Board of Education affirms the decision of the Local Board.

PART II

FACTUAL BACKGROUND

During the middle of the 1986-1987 school year, Appellant was given a short-term contract as a teacher assistant. Prior to that, she had taught as a substitute teacher for the Local Board. On June 10, 1987, Appellant was offered a contract as an elementary school teacher for the 1987-1988 school year. Appellant accepted the contract in July, 1987.

Appellant was assigned to Clifton Elementary School, which was located approximately twenty miles from her apartment. Appellant complained that she could not drive to Clifton Elementary School because she had a visual problem that prevented her from driving any distance. Appellant failed to report for duty on August 25, 1987. She was notified on August 26, 1987, that she was to report for work no later than August 31, 1987, or face disciplinary action. Appellant still refused to report for work.

The Local Board requested that a tribunal, composed by the Professional Practices Commission (“PPC”) , hear its charges against Appellant that she had willfully neglected her duties. The PPC Tribunal conducted a hearing on September 30, 1987. There was no dispute that Appellant failed to report for duty as directed. An optometrist testified that Appellant suffered from double vision that was worsened by fatigue and driving any distance. The optometrist further testified that it was his opinion that Appellant should not drive. Appellant’s “employment contract authorized the [Local Board] to transfer teachers from one position to another in order to promote efficiency.” PPC Report, p. 4. The PPC Tribunal found that Appellant’s assignment to Clifton School and the proposed termination of employment were not motivated by discriminatory intent

PPC Report, p. 7. The PPC Tribunal also found that Appellant had willfully neglected her duties and recommended her dismissal.

The Local Board adopted the findings and recommendation of the PPC Tribunal and dismissed Appellant. Appellant was notified of the Local Board’s decision on February 7, 1988, and filed her appeal with the State Board of Education on February 15, 1988.

PART III
DISCUSSION

Appellant maintains on appeal that the Local Board's decision improperly violated the provisions of the Georgia Equal Employment for the Handicapped Code, O.C.G.A. § 34-6A-1 et seq., by not assigning her to a school closer to her apartment so she could drive to work with her handicap, i.e., less than five miles. The Local Board maintains that it did not discriminate against Appellant and its decision was the result of a necessary exercise of its authority and duty to operate its schools.

The contract of a teacher can be terminated because of willful neglect of duty. O.C.G.A. § 2-2-940(a)(3). Willful neglect of duty involves an intentional violation of a known rule or policy. See, Terry v. Houston County Bd. of Educ., 178 Ga. App. 296, 342 S.E.2d 774 (1986).

It was undisputed that Appellant intentionally failed to report for her teaching assignment as directed. Appellant, however, maintains that she failed to report for work because of her handicap and the Local Board cannot dismiss her in violation of the Georgia Equal Employment for the Handicapped Code, O.C.G.A. § 34-6A-1 et seq., which provides that an employer cannot discharge a handicapped individual because of the handicap. The "material issue to be determined is whether the individual was discharged because of an inability to perform the job held as a result of the handicap, or whether the discharge was simply the result of the handicap uncoupled with inability to do that particular job." Dugger v. Delta Air Lines, Inc., 173 Ga. App. 16, 18 (1984).

In the instant case, there was no evidence the Local Board treated Appellant different from any other teacher. The Local Board maintains a contractual right with all teachers to assign or transfer the teacher where required. Appellant was hired by the Local Board notwithstanding her handicap, and dismissed because she failed to report for work, not because of her handicap. The Local Board was not required to "maintain a person who cannot perform the duties of the job because of that

person's handicap." Dugger, supra at p. 18. Appellant's only argument is that the Local Board should have assigned her to a school that was close to where she lived. The Local Board, however, cannot make its assignments based upon where its teachers live, and there does not appear to be any requirement in the statute to establish workplaces close to where handicapped employees live, or to remove a non—handicapped employee from a workplace close to where a handicapped employee lives in order to make a position available to the handicapped employee. Although Appellant may have thought she had a valid reason for not reporting to work, her actions were an intentional violation of a known rule or policy. The State Board of Education, therefore, concludes that the Local Board properly exercised its authority in assigning Appellant to the Clifton Elementary School, and properly dismissed Appellant due to her willful neglect of duty rather than because of her handicap.

PART IV

DECISION

Based upon the foregoing and the record and briefs submitted, the Local Board did not violate the Georgia Equal Employment for the Handicapped Code and properly dismissed Appellant because of her willful neglect of duty. The decision of the Local Board is, therefore, SUSTAINED.

This 12th day of May, 1988.

John M. Taylor
Vice Chairman for Appeals

