

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHARON BRAWNER,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2005-53
	:	
MARIETTA CITY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Sharon Brawner (Appellant) from a decision by the Marietta City Board of Education (Local Board) to terminate her teaching contract because of insubordination and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that there was no evidence to support the Local Board’s finding. The Local Board’s decision is sustained.

Appellant was granted a medical leave of absence because of complications from cancer. On February 2, 2004, Appellant was directed to provide a doctor’s certificate that she was fit to return to work before she returned to work. On July 15, 2004, Appellant’s leave was extended to December 31, 2004.

On August 2, 2004, however, Appellant attended the first day of pre-planning at her school without providing a doctor’s certificate of availability. Midway through the day, a wound from prior surgery opened up and Appellant had to leave for an emergency appointment at the hospital. Appellant submitted a request for four hours of pay for the time she was at the school. The school system drafted a check for her and put it in her mailbox at her school, but she never picked it up. Appellant did not return to work and was not working at the time of the hearing before the Local Board. On March 11, 2005, the Local Superintendent recommended the termination of Appellant’s contract because of insubordination and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 because Appellant had returned to work without submitting a certificate of availability and because she had been absent from school for the entire school year.

The Local Board conducted a hearing on the charges. During the hearing, Appellant claimed that she had not returned to work, but had attended the pre-planning meeting because she wanted to know what was planned for the school year. The Local Board, however, found Appellant guilty of returning to work without providing a certificate of availability. The Local Board also found that there was other good and

sufficient cause to terminate Appellant's contract because she had not worked for more than one year. Appellant then filed an appeal with the State Board of Education.

On appeal, Appellant claims that there was no evidence that she was insubordinate. Appellant argues that she could not provide a certificate of availability because she was physically unable to return to work and she attended the August 2, 2004 meeting only to receive information, not to return to work. Additionally, Appellant claims that the Local Board's policy GBRIB, regarding personal illness leaves, provides for leave for the employee's period of disability.

"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).

"The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998).

The question of whether Appellant returned to work is a question of fact to be determined by the Local Board. Although Appellant claims that she did not return to work on August 2, 2004, there was evidence that she signed in as present at the pre-planning meeting and a request for payment was made. The Local Board, therefore, could find that Appellant went to work without presenting a certificate of availability after being directed to provide such a certificate before starting to work.

Insubordination is 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). During the hearing, Appellant admitted that she received and understood the directive that she was to supply a certificate of availability before returning to work, but she nevertheless attempted to return to work without providing the certificate. The State Board of Education concludes that there was evidence from which the Local Board could conclude that Appellant was insubordinate.

Appellant also claims that the Local Board's policy GBRIB provides for an employee to be on leave during the period of their disability and, since she has been disabled throughout the period involved, the Local Board violated its own policy by terminating her contract. The Local Board's policy provides, in part, that:

An employee shall be granted leave for the period of disability and, if requested, a period not to exceed one (1) full school year.

Marietta City Board of Education Policy Manual, GBRIB, adopted August 19, 2003.

The Local Board argues that the policy provides for a maximum of one year of disability leave, regardless of the length of the disability; a school system cannot be expected to indefinitely carry an employee on disability leave. Additionally, the Local Board argues that, regardless of the length of a disability leave, Appellant's return to work effectively negated the term provisions of Policy GBRIB.

While, with a quick read, Policy GBRIB is unclear on whether a disability leave is limited to a maximum of one year, regardless of the length of the disability, or provides for leave during the entire period of disability even if it extends beyond one year, the policy does not provide Appellant with a shield against her insubordination under either circumstance. Nevertheless, a closer analysis of the policy shows that it does not restrict the leave to one year unless the employee makes some form of request. The policy grants leave for the period of disability plus an additional year if the employee asks for the additional time. The Local Board's finding of "other good and sufficient cause," which was based on the fact that Appellant was on leave for more than one year, therefore, is error since its policy permitted her to be on leave for more than one year.

Based upon the foregoing, it is the opinion of the State Board of Education that Appellant was insubordinate in returning to work without providing a certificate of availability after being directed to obtain such a certificate. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of August 2005.

William Bradley Bryant
Vice Chairman for Appeals