

LEE THOMASSEN,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION
(II),

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 18-02

ORDER

On November 28, 2017, Mr. Thomassen filed a complaint with the State Board alleging that the Baltimore County Board of Education (“local board”) discriminated against him and other school system employees with “genetic deficiencies” based on violations of the Genetic Information Nondiscrimination Act of 2008 (“GINA”), 42 U.S.C. 2000ff, *et seq.*¹ See also Md. Code Ann., Educ., State Gov’t §20-606. Among other things, GINA bars employers from collecting certain genetic information from their employees and from using genetic information when making hiring, firing, job placement or promotion decisions. *Id.* Mr. Thomassen asks the State Board to investigate his complaint. We requested the local board’s response.

The local board responded by requesting dismissal of the complaint. It argued that the State Board does not have authority to investigate a GINA complaint. Under federal law, an individual has 180 days to file a complaint with the Equal Employment Opportunity Commission (“EEOC”) requesting investigation of a GINA violation. 42 U.S.C. §2000ff-6. Under State law, an individual has that same amount of time to file a complaint with the Commission on Civil Rights (“Commission”) requesting investigation of employment discrimination based on genetic information. Md. Code Ann., State Gov’t §20-1004. Thus, it is the EEOC and the Commission that have jurisdiction to investigate such complaints, not the State Board.

In addition, the local board requested dismissal based on untimeliness. It argued that even if the request for an investigation were an appeal, the request related to Mr. Thomassen’s employment and termination. The local board had terminated him on May 23, 2017. This appeal, filed 6 months after that date is untimely. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board “shall be taken within 30 calendar days of the decision of the local board” and that the “30 days shall run from the later of the date of the order or the opinion reflecting the decision.” Therefore, any appeal alleging the illegality of Mr. Thomassen’s

¹ We note that this is the second case filed by Mr. Thomassen. He has an already existing appeal pending before this Board that he filed on June 22, 2017. In that case, Mr. Thomassen challenged his termination from his teaching position alleging that it was based on disability discrimination. Pursuant to §6-202 of the Education Article, we transferred the case to the Office of Administrative Hearings for review and the issuance of a proposed decision by an administrative law judge. We are awaiting a decision.

termination or other employment actions of the local board should have been transmitted to the State Board on or before June 22, 2017.

Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. *See Scott v. Board of Educ. of Prince George's County*, 3 Op. MSBE 139 (1983). No such extraordinary circumstances exist here.

Therefore, it is this 27th day of February 2018 by the Maryland State Board of Education, ORDERED, that the complaint referenced above is hereby dismissed for lack of jurisdiction and untimeliness. *See* COMAR 13A.01.05.03C(2).

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Andrew R. Smarick
President