

SUZANNE MCNAMARA

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-15

OPINION

INTRODUCTION

Suzanne McNamara (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) to deny the renewal of her teaching certificate and end her employment. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant has worked as a science teacher for Baltimore City Public Schools (City Schools) since 2007, earning tenure under the regular teacher's contract. Teachers are required under the regular teacher's contract to hold certification from the Maryland State Department of Education (MSDE). Appellant most recently held an Advanced Professional Certificate (APC) in the certification areas of Biology, Grades 7-12. Her teaching certificate was valid from July 1, 2013 through June 30, 2018. (Appeal; Motion, Ex. 1).

An APC must be renewed every 5 years. In order to renew an Advanced Professional Certificate, an individual must submit a professional development plan, verification of three years of satisfactory school-related experience in the preceding five years, and 6 semester hours of acceptable credit. COMAR 13A.12.01.11(B)(5). An educator must earn the 6 semester hours of acceptable credit during the five years in which the certificate is valid.

MSDE has authority to issue teaching certificates. City Schools, however, processes these requests for certificates for its employees, including reviewing and deciding whether its employees have met certification requirements. City Schools employees act on behalf of MSDE when processing certification requests.

On June 30, 2017, one year before her certificate expired, Appellant received an email from City Schools that stated the following:

This is just a reminder notification, to inform you, that according to Human Capital records, your teaching certificate will expire in 1 year. Maryland State regulations require [that] all teachers and specialists must hold active certificates if employed in [a] public school system working in the areas of early childhood, elementary, PreK-12, or secondary school program.

The email provided a link to a webpage with additional information, as well as an email, phone, fax, and mailing address for the City Schools certification office. (Motion, Ex. 2).

On May 17, 2018, while out of the office on approved childcare leave, Appellant filed for renewal of her teaching certificate. She submitted documentation for seven credits to be used towards the 6-semester-hour-renewal requirement. Three of the credits came from a Maryland Approved Continuing Professional Development experience titled “Supervising Pre-Service Teacher.” The “dates of experience” for the course were listed as the 2012-13 school year. The course instructor signed a form on July 8, 2013 indicating that Appellant had successfully completed the experience. According to Appellant, the experience took place from June 24 through June 28, 2013.¹ (Motion, Ex. 3).

On May 25, 2018, City Schools rejected Appellant’s request for renewal. It stated that it accepted four of Appellant’s credits, but rejected the professional development experience because it took place during the 2012-13 school year. Appellant’s current certificate became effective on July 1, 2013, and the renewal regulation requires that acceptable credits must be earned during the validity period of the certificate (in this case between July 1, 2013 and June 30, 2018). Because Appellant completed the professional development experience *before* July 1, 2013, it could not be used as acceptable credit towards the renewal of her certificate. (Motion, Ex. 3).

On May 30, 2018, Appellant responded that she did not have two additional credits for renewal, but that she planned to take a summer online course, beginning June 13, 2018 and ending on July 17. She also stated that she spoke with an MSDE employee, who mentioned a “90-day grace period.” Appellant asked City Schools about whether a “grace period” would apply to her and if the summer 2018 course could be used toward her renewal. City Schools apparently did not respond. Separately, Appellant called the City Schools Office of Human Capital and spoke to someone who told her she could submit her renewal request in July after completing the additional two credits. (Motion, Ex. 3; Appeal, Ex. C).

On June 18, 2018, City Schools approved Appellant’s request for unpaid childcare leave from August 28, 2018 through June 30, 2019. (Appeal, Ex. A).

On July 5, 2018, City Schools sent Appellant a letter ending her employment as of July 7, 2018 for “failure to meet certification requirements or maintain professional certification as mandated by the Maryland State Department of Education.” The letter stated that Appellant’s certification expired on June 30, 2018 and that she had not timely submitted the required

¹ Appellant states that final assignments for the experience were not due until after July 1, 2013, but this is not reflected on the documents provided to City Schools.

documents for renewal. (Appeal, Ex. B).

On July 12, 2018, Appellant filed an appeal with the local board. The local board referred the case to a hearing examiner, who reviewed the case on the documents submitted by the parties without a hearing or oral argument. The hearing examiner found that Appellant failed to meet her certification renewal requirements prior to the June 30, 2018 expiration of her certification. As a matter of law, once she failed to hold valid certification, Appellant's regular teacher's contract automatically ended. *See* COMAR 13A.07.02.01B ("This contract shall automatically terminate if the employee ceases to hold a professional certificate."). The hearing examiner concluded that the 90-day grace period found in regulation had no bearing on the City Schools decision and that Appellant bore sole responsibility for ensuring she held a valid certificate. The CEO adopted this decision as her own. (Motion, Ex. 4).

On October 23, 2018, the local board voted to adopt the hearing examiner's decision and uphold the CEO. (Motion, Ex. 7). After leaving her employment with City Schools, Appellant applied directly to MSDE in order to reinstate her certificate. She submitted a 2-credit course completed on July 24, 2018 (after her certificate expired) as part of her request. On October 26, 2018, MSDE approved Appellant's request to reinstate her certificate. Appellant currently holds an APC, valid from July 1, 2018 through June 30, 2023. (Appeal, Exs. C, E; Motion, Ex. 4).

This appeal followed.

STANDARD OF REVIEW

This case involves the application of teacher certification regulations. The State Board exercises its independent judgment on the record before it in the explanation and interpretation of State Board regulations. COMAR 13A.01.05.06E.

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

This case demonstrates the crucial differences between the *renewal* of an educator's certificate and the *reinstatement* of a certificate. In Maryland, teachers agree by contract to maintain active professional certification as a condition of employment. *See* COMAR 13A.07.02.01B ("This contract shall automatically terminate if the employee ceases to hold a professional certificate."). Certificates are valid for a period of five years. During that five-year period, educators must meet the renewal requirements for their certificate in order for those certificates to remain continuously active. COMAR 13A.12.01.11. In Appellant's case, by June 30, 2018, she had to submit a professional development plan, verification of three years of satisfactory school-related experience in the preceding five years, and 6 semester hours of acceptable credit earned between July 1, 2013 and June 30, 2018. If she did so, her certificate would remain active and she would meet the terms of the regular teacher's contract.

MSDE allows an individual to submit documentation that he or she has met the renewal requirements up to 90 days after the certificate has expired. In order to take advantage of this “grace period,” the educator must have met the renewal requirements *before* the certificate has expired. See COMAR 13A.12.01.11A(2) (“Renewal requirements shall be received at the Department within 90 days of the expiration date listed under ‘Period of Validity’ on the certification in order for the certificate to be considered continuous.”). In other words, an individual whose certificate ends on June 30, 2019, could use credits earned before July 1, 2019 to renew her certificate. MSDE would accept those credits towards the renewal for up to 90 days after the certificate has otherwise “expired.” If the credits are submitted within that 90-day window, the certificate will be renewed as of July 1, 2019, and be considered “continuous.”

Holding a certificate that is “continuous” is important for purposes of the regular teacher’s contract, which requires that educators maintain valid certificates at all times. An educator who does not earn acceptable credit within the five-year window, or fails to submit acceptable credit earned within 90 days of the certificate’s expiration date, has failed to meet the renewal requirements. In such a case, that educator’s certificate expires and the regular teacher’s contract terminates automatically.

If an educator fails to renew a certificate by the deadline set in regulation, the educator may “reinstate” the certificate. To reinstate a certificate, an educator may present the required six semester hours of acceptable credit, which may be earned *after* the certificate has expired. COMAR 13A.12.01.12. This reinstatement provision does not, however, result in a certificate being “continuous.” Instead, the certificate expires and is reinstated as of either January 1 or July 1, depending on when MSDE receives the appropriate documentation.² As explained below, although the difference between renewing and reinstating a certificate is not significant for licensing purposes, it can have a major impact on one’s employment status.³ With this background in mind, we turn to Appellant’s arguments.

90-day “grace period”

Appellant asserts that City Schools wrongfully ended her employment when it concluded that she failed to renew her certificate before its expiration date. She maintains that City Schools should accept the credits she earned in July 2018, after the expiration of her certificate, because of the “grace period” found in regulation.

² In Maryland, a certificate becomes “effective” on one of two dates: January 1 or July 1. COMAR 13A.12.01.10D. If an educator submits documentation to reinstate a certificate between January 1 and June 30, the certificate will reflect a “valid from” date of January 1, even if the request for reinstatement is received weeks or months later. *Id.* Similarly, if an educator submits documentation between July 1 and December 31, the “valid from” date is July 1. *Id.* By requiring a certificate to be “backdated” through this regulation, an educator can begin working immediately upon having a certificate reinstated, rather than having to wait until some future date for a certificate to become valid again.

³ MSDE, under the direction of the State Board and Professional Standards and Teacher Education Board, is currently working on significant revisions to its certification regulations in order to simplify the regulations while maintaining high standards for educators.

As explained above, the 90-day grace period for the renewal of a certificate merely allows additional time for someone to present credits earned *prior* to the expiration of the certificate. The regulation does not allow for additional time to earn credits *after* a certificate has expired. Credits earned after a certificate expired may only be used to reinstate the certificate, not to renew it.

Appellant claims that someone at City Schools told her she could submit credits earned after the expiration date on her certificate. Even if someone did mistakenly give Appellant this information, it directly contradicts MSDE's regulations. City Schools, while acting on behalf of MSDE to process certification requests, must follow MSDE regulations, including the regulation establishing a grace period. It has no authority to waive those regulations or otherwise veer from them. Because the certification regulations do not allow for someone to renew a certificate using credits earned after that certificate expired, City Schools had no choice but to deny Appellant's renewal request.

Appellant argues that her certificate shows a "valid from" date of July 1, 2018, which means that MSDE must have "renewed" her certificate. Appellant has presented no evidence to show that MSDE accepted the credits she earned in July 2018 towards the renewal of her certificate, rather than for the purpose of "reinstating" the certificate. As stated previously, a certificate that is reinstated between July 1 and December 31 will be dated July 1, regardless of when during that period of time the documents are presented to MSDE. The fact that Appellant's certificate is dated July 1, therefore, does not indicate it was renewed. Instead, based on the record in this case, Appellant's certificate was reinstated as of July 1 because the credits she submitted to MSDE were earned after her certificate expired. A certificate that is reinstated, unlike a certificate that is renewed, is not considered "continuous."

This distinction matters little for licensing purposes, but the difference between reinstatement and renewal is a significant one for purposes of a teacher's employment. COMAR 13A.07.02.01B, also known as the regular teacher's contract, states: "This contract shall automatically terminate if the employee ceases to hold a professional certificate." After Appellant failed to earn six credits towards the renewal of her certificate during its five-year validity period, her certificate expired and her contract automatically ended. In our view, City Schools acted according to the certification regulations when it declined to accept credits earned after the certificate expired. Once Appellant's contract expired, City Schools had the discretionary authority to decide whether to hire Appellant under a new contract. *See Torres v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 18-04 (2018).

Discrimination based on childcare leave

Appellant argues that City Schools acted in a discriminatory manner by ending her employment while she was on childcare leave. She maintains that City Schools has not ended the employment of other employees in similar situations who were not on childcare leave. Appellant began using childcare leave during the 2017-18 school year and received approval in July 2018 to begin unpaid childcare leave during the 2018 summer.

Claims of employment discrimination require a “burden-shifting analysis” which requires an employee to provide a *prima facie* showing that (1) she belongs to a protected class and (2) has sufficient evidence to give rise to an inference of unlawful discrimination. *Yang v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 09-30 (2009) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). *See also Williams v. Maryland Dep’t of Human Res.*, 136 Md. App. 153, 164-65 (2000). The burden then shifts to the employer to present evidence of a non-discriminatory reason for the termination. *Id.* If the employer meets the burden, the employee must then show that the stated reason was merely pre-textual. *Id.*

Maryland law defines protected classes based on race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, disability, or genetic information. Md. Code, State Government §20-602. Appellant has identified her class as individuals who are using childcare leave. This is not one of the protected categories under the State’s discrimination law. As a result, Appellant fails to meet the first prong required to show employment discrimination. Moreover, even if Appellant had shown she was in a protected class, a conclusory statement that she was discriminated against, without more, does not meet her burden to provide “sufficient evidence to give rise to an inference of unlawful discrimination.” *See Weeks v. Carroll County Bd. of Educ.*, MSBE Op. No. 13-44 (2013) (“Allegations of discrimination must be supported by evidence. Allegations alone are insufficient to support a claim of discrimination.”).

CONCLUSION

We affirm the decision of the local board because it was not arbitrary, unreasonable, or illegal.

Justin M. Hartings
President

Gail H. Bates

Vermelle D. Greene

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

Absent:
Stephanie R. Iszard
Vice-President

March 26, 2019