

DENISE FLOWERS BROOKS,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 24-14

OPINION

INTRODUCTION

Denise Flowers Brooks (“Appellant”) challenges the decision of the Prince George’s County Board of Education (“local board”) affirming the termination of her employment as a school bus driver based on a positive test result for a controlled substance (marijuana) during a random drug test. The local board responded to the appeal maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded, and the local board replied.

FACTUAL BACKGROUND

Beginning in 2017, Appellant served as a school bus driver with Prince George’s County Public Schools (“PGCPS”). (R. 27-28). PGCPS school bus drivers are subject to State and federal regulations, as well as local board policy, requiring employees to refrain from alcohol and substance use and to submit to random drug testing. (R. 212)

On April 24, 2023, Appellant was selected for and submitted to random drug testing by White Glove Drug & Alcohol Testing, Inc. (“White Glove”). (R. 72). On April 30, 2023, White Glove informed PGCPS that Appellant’s drug test had been positive for marijuana, a prohibited controlled substance. (R. 73). On May 1, 2023, PGCPS informed Appellant that a recommendation for termination was made to the Employee and Labor Relations Office (“ELRO”). The letter alleged a violation of *PGCPS Regulations for Supporting Personnel*, specifically being under the influence of alcoholic beverages or a controlled dangerous substance during the workday. (R. 80). Following this recommendation, a *Loudermill* due process meeting was scheduled.

On May 31, 2023, Ms. Wanda Battle, an ELRO representative, facilitated Appellant’s *Loudermill* meeting, which both Appellant and her union representative attended. According to the records of the *Loudermill* meeting, Appellant informed Ms. Battle that she suffered from chronic pain due to two motor vehicle accidents in 2006 and 2019. According to Ms. Battle’s notes, Appellant shared that she has been taking various pain medications since 2006; however, Appellant asserted that she does not smoke THC, the active component in marijuana. Additionally, Appellant alleged at her *Loudermill* meeting that she was unaware of the

regulations and policies surrounding her termination and that she had not fully paid attention to her *SafeSchools* training. (R. 81-84).

Following the *Loudermill* meeting, Appellant's union representative submitted documentation of Appellant's patient ID card dated August 2, 2021, confirmation from a doctor that she was evaluated for a medical marijuana license on September 2, 2021, and a medical marijuana license dated October 26, 2022. (R. 88-94).

By letter on July 31, 2023, the Superintendent's Designee informed Appellant that her employment was being terminated due to her positive test for a controlled dangerous substance (marijuana). The Designee determined that Appellant's actions constituted willful neglect of duty, misconduct in office, and violated departmental and agency procedures. (R. 2-7).

On August 30, 2023, Appellant submitted an appeal through legal counsel requesting a reversal of her termination decision. Appellant alleged a denial of due process on the grounds that PGCPs failed "to follow appropriate chain of custody with the urinalysis" and refused her request for a retest. Specifically, Appellant alleged that the administration of the drug test did not follow proper protocol because she waited in the same room as another PGCPs employee to return her test and the White Glove employee collecting the specimen "looked distracted." Appellant also noted that the drug test did not show traces of her legally prescribed medication, which she claimed to be taking; thus, she concluded that the other individual's sample was incorrectly attributed to her. Appellant also asserted that her termination was illegal as PGCPs was discriminating against her based on her disability. (R. 9-55)

On November 3, 2023, the PGCPs Superintendent submitted a response to the appeal. The Superintendent argued that the due process requirements were satisfied, and that State and federal law mandated Appellant's termination. The Superintendent also argued that Appellant did not meet the requisite burden of proof for a discrimination claim, citing the lack of evidence demonstrating Appellant has a qualifying disability or that PGCPs was aware of and discriminated upon any qualifying disability. (R. 57-62).

On March 6, 2024, after considering the appeal, the Superintendent's Response to Appeal, and exhibits submitted, the local board issued an Order denying the appeal and affirming the termination decision on the grounds of misconduct in office and willful neglect of duty. (R. 172).

This appeal followed.

STANDARD OF REVIEW

In cases involving a local board's policy, or a controversy or dispute regarding the local board's rules and regulations, the local board's decision is considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision was arbitrary, unreasonable or illegal. COMAR 13A.01.05.06A. Appellant bears the burden of proof by a preponderance of the evidence. See COMAR 13A.01.05.06(D).

LEGAL ANALYSIS

Under State regulations, a local school system must implement an alcohol and controlled substances testing program for all school vehicle drivers or certify to the Maryland State Department of Education that all school vehicle drivers are participating in an alcohol and controlled substances testing program. COMAR 13A.06.07.11A(1). Drivers who test positive for alcohol, controlled substances, or both are generally disqualified from operating a school vehicle in Maryland. COMAR 13A.06.07.11B(1)(i).

Consistent with the regulation, the local board developed *Administrative Procedure 4110: Alcohol and Controlled Substance Testing for School Vehicle Drivers and Employees Performing Safety Sensitive Functions*, which includes random alcohol and substance testing. (R. 214). School bus drivers are also subject to the safety expectations outlined in the PGCPSTransportation Department Standard Operating Procedures (SOPs). The SOPs define dereliction of duty as including “[u]sing or being under the influence or impaired by any controlled substance or any drug when not properly prescribed.” When operating a bus, “a school bus driver shall NEVER drive a school bus while under the influence of alcohol, controlled substances, or prescribed medications, which might impair the ability of the driver.” (R. 185-187) (emphasis in original).

This case involves the Appellant’s termination as a school bus driver for testing positive for a controlled dangerous substance (marijuana) in violation of local board policy. Appellant contends that the local board acted arbitrarily, unreasonably, and illegally when it upheld the termination because she was allegedly deprived of due process and discriminated against based on disability.

Due Process

Appellant argues the local board’s decision was arbitrary and unreasonable because her due process rights were violated when PGCPST failed to provide her with a second opportunity to complete a drug test after the April 24, 2023, test allegedly resulted in an erroneous positive result for marijuana. Appellant argues that the drug test should have tested positive for her other prescribed medications, and the fact that it did not is evidence that the test was flawed. Appellant alludes to the testing staff appearing distracted. However, Appellant’s contention that her test is invalid on the grounds that the testing facility did not follow the appropriate “chain of control” is not based on sound factual evidence. Appellant fails to provide any evidence that the testing facility mistakenly attributed another individual’s sample to her. The State Board has consistently held that Appellant bears the burden of supporting allegations of illegality with factual evidence. *Ronald Brown v. Queen Anne’s Cnty. Bd. of Educ.*, MSBE Op. No. 14-11 (2011) (citing *Breedon v. Prince George’s Cnty. Bd. of Educ.*, MSBE Op. No. 08-34 (2008)). In contrast, Appellant’s union representative did submit clear evidence of Appellant’s medical marijuana license, patient ID, and doctor’s note for the use of marijuana.

Neither law nor policy mandates the retesting of employees concerned about the accuracy of their drug test. In light of these facts, the lack of evidence, and the local board’s obligation to disqualify school bus drivers for testing positive for controlled substances under COMAR

13A.06.07.11B(1)(i), we do not find the local board’s decision to affirm the denial of a second drug test and reliance on the April 24, 2023, test to be arbitrary or unreasonable.

Disability-Based Discrimination

Appellant also argues that the local board’s decision was illegal because her termination violated the Americans with Disabilities Act of 1990 (“ADA”), specifically that her termination constituted disability-based discrimination. To establish a *prima facie* claim of unlawful termination based on disability discrimination under the ADA, Appellant must produce evidence that (1) she is an individual with a disability; (2) that she is a “qualified individual” for the employment in question; and (3) that the local board terminated her (i.e., took adverse action) because of her disability. *See Jacobs v. North Carolina Admin. Office of the Courts*, 780 F.3d. 562, 572 (4th Cir. 2015).

The local board argues that Appellant fails to establish a *prima facie* case because she did not notify PGCPs of her alleged disability prior to the *Loudermill* hearing. The local board notes that there is no record of Appellant ever submitting a request for reasonable accommodations pursuant to Administrative Procedure 4172 Processing Requests for Reasonable Accommodation or contacting the Office of Equity Assurance. Appellant argues that PGCPs was on notice due to documentation submitted about pain management medication from prior positive drug tests. In support of this allegation, Appellant presents a note dated May 9, 2023, from Pain Management Associates citing their treatment of the Appellant since May 2021. (Appeal, Enc. 7). However, there is neither evidence of when or if this letter or information was provided to PGCPs, nor documentation that may have been provided related to any prior positive drug test. As such, we concur with the local board that Appellant has failed to establish a *prima facie* case for discrimination under the ADA.

New Argument on Appeal to State Board

Appellant raises a new argument on appeal to the State Board that a positive drug test for marijuana does not demonstrate that Appellant consumed marijuana or was under the influence during work hours; therefore, termination of Appellant is arbitrary and unreasonable. We have long held that arguments not raised before the local board will not be considered on appeal by the State Board. *See Nikol E. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 19-18 (2019) (citing cases). It would be inappropriate to rule on an issue that the local board did not have an opportunity to address; therefore, we decline to consider Appellant’s argument.

CONCLUSION

For the foregoing reasons, we affirm the decision of the local board because it was not arbitrary, unreasonable, or illegal.

Signatures on File:

Clarence C. Crawford
President

Joshua L. Michael
Vice-President

Shawn D. Bartley

Chuen-Chin Bianca Chang

Susan J. Getty

Nick Greer

Irma Johnson

Rachel McCusker

Samir Paul

Abstained:
Monica Goldson

Absent:
Joan Mele-McCarthy
Holly Wilcox

June 25, 2024