

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JULIE MCGOLDRICK-STEWART,)	
Appellant,)	
)	
v.)	C.A. No. N13A-03-019ALR
)	
BOARD OF EDUCATION OF THE RED)	
CLAY CONSOLIDATED SCHOOL DISTRICT,)	
Appellee.)	

Submitted: July 19, 2013
Decided: September 25, 2013

**On Appeal from Decision of the
Board of Education of the Red
Clay Consolidated School District**

AFFIRMED

MEMORANDUM OPINION

Rocanelli, J.

This is an appeal by Julie McGoldrick-Stewart (“Claimant”) from the March 20, 2013 decision (“Decision”) of the Board of Education of the Red Clay Consolidated School District (“Board”). Claimant had been employed by the Red Clay Consolidated School District (“Red Clay”) as a school psychiatrist. Red Clay sought to terminate Claimant’s employment on the grounds of (i) immorality and (ii) willful and persistent insubordination. A hearing was held on February 25, 2013 (“February 25 Hearing”) and the hearing officer issued a report and recommendation on March 18, 2013 (“Report and Recommendation”). On March 20, the Board met in Executive Session to review the record of proceedings before the hearing officer, including the Report and Recommendation. Following its review, the Board voted to terminate Claimant’s employment on the grounds of immorality and willful and persistent insubordination. In its Decision, the Board agreed with and accepted the hearing officer’s recommendation that Claimant should be terminated on the grounds of immorality. The Board rejected the hearing officer’s conclusion that termination was not the proper remedy for willful and persistent insubordination.

On March 27, 2012, Claimant appealed the Board’s decision to terminate her employment. According to Claimant, the record lacked substantial evidence to support the Board’s decision. For the reasons set forth below, the Board’s decision is affirmed.

I. PROCEDURAL HISTORY

A. FACTS AND RED CLAY’S INVESTIGATION

Claimant worked for Red Clay as a school psychologist from 2008 until her termination in 2013. During the 2012-2013 school year, Claimant was assigned to A.I. DuPont Middle School (“AI DuPont”). As a school psychologist, Claimant was responsible for a variety of

student-counseling responsibilities, including drug and alcohol counseling. Claimant remained on the Red Clay's payroll until February 22, 2013.

On or about December 20, 2012, it was brought to the attention of the administration of AI DuPont that Claimant had approached a school custodian ("Custodian") about purchasing marijuana. When AI DuPont Principal Theodore Boyer ("Principal") was made aware of the allegations, he contacted the District's Human Resource Manager Christine Smith ("HR Manager") who investigated the matter. On December 21, 2012, after determining that the Custodian's statements regarding his interactions with Claimant were credible, HR Manager and Principal requested a meeting with Claimant. After informing Claimant of the allegations against her, Claimant requested the presence of her union representative. The union representative could not be located. HR Manager told Claimant that the HR Manager did not know the next step but, based on the nature of the allegations, HR Manager placed Claimant on administrative leave by handing her a letter that read:

I cannot reach [union] representative Laura Rowe until January 3, 2012. I will contact you once I have discussed this with Laura. While on leave, you must make yourself available during work hours for communications to include phone calls and/or meetings.

When Claimant left the school on December 21, the HR Manager told Claimant to be prepared to take a drug test that day and to be available by phone during school hours. Claimant left the school at approximately 10:30 AM after being placed on administrative leave. Claimant testified that she had unintentionally left her cell phone in her car when she arrived at home and did not notice until 5:00 that evening that she did not have her cell phone. Meanwhile, the HR Manager had called Claimant on Claimant's cell phone and left a voicemail directing Claimant to appear at a drug testing facility that closed at 4:00 that day for a drug test. On the voice mail

message, the HR Manager provided her office and cell phone numbers and requested that Claimant call the HR Manager to confirm receiving the voicemail.

At approximately 12:30 PM that day, the HR Manager sent Claimant the following e-mail:

I instructed you this morning to keep your phone handy as I would be calling you for a follow-up today. I also told you it was possible you would be sent for a drug test today. You told me you would agree to a test. I called your call at 10:30 am to direct you to a drug testing facility. You did not answer and I left you a voice mail with instructions, directions and to call me back to confirm...I called an hour later and you did not answer again...Your failure to answer my phone calls and/or report for testing will be view as insubordination and appropriate disciplinary action, with potential termination, will be taken.

Later that afternoon, the HR Manager sent an e-mail to the Principal and to Claimant's union representative, stating that the HR Manager had not yet heard from Claimant.

Claimant contacted the HR Manager on December 27, 2012, and offered to take a drug test. Red Clay declined Claimant's offer to take a drug test, stating that the accuracy of the results would be unreliable because of the time delay.

By letter dated January 10, 2013, Red Clay informed Claimant that Red Clay intended to recommend to the Board that Claimant be terminated. The Board met on January 16, 2013. The details of the HR Manager's investigation were compiled in the Personnel Action Report (the "Report"), which was submitted to the Board for review. The Board decided to terminate Claimant's employment and Claimant requested a hearing. The hearing was scheduled for February 25, 2013.

B. REPORT AND RECOMMENDATION

At the February 25 Hearing, the hearing officer issued a Report and Recommendation. The hearing officer concluded that the testimony offered by Red Clay employees regarding Claimant's solicitation to purchase marijuana was credible. The hearing officer concluded that Claimant did not intentionally make herself unavailable on December 21. However, the hearing officer did find that Claimant purposefully failed to return the December 21 message until December 27, 2012 in an effort to speak with a union representative prior to agreeing to submit to a drug test. These were credibility findings which the hearing officer was in the best position to make, having heard the testimony of various witnesses.

The Report and Recommendation included findings of both immoral conduct and willful and persistent insubordination. The Report and Recommendation concluded that Claimant should be terminated for her immoral conduct. On the other hand, the Report and Recommendation concluded that termination was not the appropriate penalty for the willful and persistent insubordination. These were the recommendations submitted to the Board for consideration.

C. BOARD'S DECISION TO TERMINATE

On March 20, 2013, the Board met in Executive Session. The Report and Recommendation was adopted by the Board with one exception. The Board concluded that both (i) immorality *and* (ii) willful and persistent insubordination were each sufficient independent grounds for Claimant's termination. This appeal followed.

II. STANDARD OF REVIEW

Appeals from a board of education decision may be made to the Superior Court, pursuant to Superior Court Rule 72(a).¹ This Court's review of a school board decision is limited to the substantial evidence standard.² Substantial evidence is defined as "relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³ The substantial evidence standard is a lower burden than the civil burden of preponderance of the evidence, but is more than a scintilla of evidence.⁴

The purpose of this standard of review is to promote an efficient school system by allowing school boards to enforce discipline in teaching staffs and to terminate those who are unfit.⁵ A school board is in a better position to determine witness credibility and resolve any conflicts in testimony,⁶ and a school board's key function is to arrive at a decision after weighing and appraising the evidence.⁷ Accordingly, "the Superior Court [shall not] substitute its judgment for the judgment of the school authorities."⁸ If substantial evidence exists to support

¹ Supr. Ct. R. 72(a) ("This Rule shall apply to appeals to the Superior Court from all commissions, boards, hearing officers under the Personnel Rules for Non-Judicial Employees, or courts from which an appeal may at any time lie to the Superior Court to be tried or heard on the record made below.")

² *Lehto v. Bd. of Educ. of Caesar Rodney Sch. Dist.*, 962 A.2d 222, 225 (Del. 2008).

³ *Bd. of Educ., Laurel Special Sch. Dist. v. Shockley*, 155 A.2d 323, 327 (Del. 1959).

⁴ *Bd. of Educ. Smyrna Sch. Dist. v. DiNunzio*, 602 A.2d 85, 94 (Del. Super. Ct. 1990).

⁵ *Lehto*, 962 A.2d at 226 n. 11 (citing *Shockley*, 155 A.2d at 327-28).

⁶ 14 *Del. C.* § 1414 ("The conduct of such hearings and such rules of procedure as may be found necessary shall be left entirely to the discretion of the board."); *Bethel v. Bd. of Educ., Capital Sch. Dist.*, 985 A.2d 389, 391 (Del. 2009) (TABLE).

⁷ *Shockley*, 155 A.2d at 327.

⁸ *Id.* at 327-28.

the board's findings, and the board has not committed any error of law, the decision must be affirmed.⁹

III. DISCUSSION

This Court must decide if the Board's decision to terminate Claimant's employment contract on the grounds of immorality and willful and persistent insubordination was supported by substantial evidence in the record; whether a fair hearing was held; and whether the Board made any errors of law.

A. Immorality

The Delaware Supreme Court, for purposes of 14 *Del. C.* §1411, has defined 'immorality' to be activity that strays from the common mores of society.¹⁰ Within the context of Chapter 14, the term is construed to mean conduct that may reasonably be found to impair the teacher's effectiveness by reason of his [or her] unfitness or otherwise.¹¹ If the termination stems from immorality that occurred while the teacher was off-duty, a nexus must exist between the off-duty conduct and their duties as a teacher.¹² Further, the Board may consider off-campus acts if such acts relate to his/her fitness as a teacher and have an adverse effect on or within the school community.¹³ The Board may weigh the impact that the immoral conduct will have on the teacher's ability to teach, the ability to maintain discipline in the classroom, the effect the act

⁹ *Brumbley v. Bd. of Educ. of Polytech Sch. Dist.*, 1998 WL 283378, at*1 (Del. Super. Feb. 18, 1998).

¹⁰ *Lehto*, 962 A.2d at 226 (citing *Skipchuck v. Austin*, 379 A.2d 1142, 1143 (Del. Super. Ct. 1977)).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

will have on the teacher's students, and the attitudes of the teacher's students' parents when determining if such a nexus exists.¹⁴ That nexus is present here. Indeed, Claimant conceded that if the facts as alleged about purchasing marijuana were true, then she could not effectively be a role model for students and would affect her ability to counsel students.¹⁵

The Board's conclusion was supported by substantial evidence and concludes that Claimant's involvement with illegal drug activity constituted immoral conduct. Because McGoldrick's professional duties included providing drug and alcohol counseling to students, her personal conduct impaired her effectiveness as the school psychologist.¹⁶ The termination by Red Clay for Claimant's immoral conduct was appropriate and the Board decision must be affirmed.

B. Willful and Persistent Insubordination

Willful and persistent insubordination is defined as the "a constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by and with proper authority."¹⁷ The Hearing Officer's factual findings which are based on credibility assessments are entitled to great weight.¹⁸ The Court concludes that there was substantial evidence for the conclusion that Claimant's conduct was willful and persistent insubordination. The Hearing Officer determined, and this Court agrees, that the school had the authority to request Claimant to undergo a drug test. There is substantial evidence to establish that, based

¹⁴ *Id.* at 227.

¹⁵ Board Record on Appeal, P. 126 (February 25 Hearing transcript pp. 183-4).

¹⁶ Claimant conceded in her testimony that if the "facts as alleged by Mr. Custodian were true, then [Red Clay] would have been justified in believing her role would be undermined."

¹⁷ *Sheck v. Bd of Educ. of Colonial Sch. Dist.*, No. 82A-MR-19, 1983 WL 409633, at *2 (Del. Super. Ct. Ct. 1983) (quoting *Shockley v. Bd. of Educ., Laurel Special Sch. Dist.*, 149 A.2d 331, 334, *rev'd on other grounds*, 156 A.2d 214 (1959)).

¹⁸ *Bd. of Educ., Laurel Special Sch. Dist. v. Shockley*, 155 A.2d 323, 327 (Del. 1959).

upon other circumstances, Red Clay had the requisite probable cause to request Claimant to submit to drug testing.

Based on the testimony presented at the February 25 Hearing, the hearing officer concluded that the purpose of Claimant's efforts to contact her union representative was to intentionally avoid contact with the HR Manager before December 27, 2012. Claimant's testimony was rejected as not credible and the hearing officer found, contrary to Claimant's testimony, that Claimant intentionally avoided contacting the HR Manager. The Board reasonably concluded that Claimant should have called the HR Manager to seek clarification. Accordingly, the Court agrees that Claimant's failure to take any action in light of the allegation against her is sufficient evidence for the conclusion that Claimant intentionally ignored the HR Manager's directive to get a drug test for six days. Therefore, the Board's conclusion was supported by substantial evidence and termination was an appropriate response to Claimant's willful and persistent insubordination.

IV. CONCLUSION

The Court has examined the record and has determined that substantial evidence exists to support the Board's findings. The Board has not committed any errors of law or acted arbitrarily. Because this Court may not substitute its judgment in the place of the Board's judgment and no legal error was committed, the Board's decision must be and hereby is **AFFIRMED.**

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli