

SHEILA GRAUEL,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-16

OPINION

Sheila Grauel, a school bus driver, appeals the decision of the local board upholding her dismissal from the Montgomery County Public School System (“MCPS”) based on her involvement in three preventable accidents within a 24-month period. Appellant claims that (1) she was denied the opportunity to appeal the decision of the Bus Accident Review Committee regarding the second accident on September 22, 1995; (2) the third accident on April 17, 1997 was not a “preventable” accident; and (3) her termination was discriminatory in light of the school system’s treatment of other bus drivers. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board’s motion.

BACKGROUND

Sheila Grauel was employed as a school bus driver for MCPS for approximately twenty years. On April 17, 1997, Appellant was involved in an accident as she exited a 7-Eleven parking lot while driving a MCPS bus. After investigation, the Bus Accident Review Committee determined that the incident was a “preventable accident” as defined by COMAR 13A.06.07.01B(6).¹ The decision was appealed to the Accident Review Board (“ARB”) which also concluded that the accident was preventable. Appellant did not appeal the ARB decision.

During the preceding twenty-four month period, Appellant had been involved in two other accidents. The first accident occurred on September 21, 1995. This accident was reviewed by the BARC and found to be preventable. The second accident occurred the next day, on September 22, 1995. This accident was also reviewed by the BARC and deemed preventable. Appellant did not appeal the BARC decisions regarding either accident.

Because Appellant was found to have been involved in three “preventable accidents”

¹COMAR 13A.06.07.01(6) defines a “preventable accident” as “an accident in which the driver failed to do everything the driver reasonably could have done to prevent it, according to accepted standards of the National Safety Council.”

during a twenty-four month period, she was disqualified as a school bus driver pursuant to COMAR 13A.06.07.05(C)(3)(e).² Rather than immediately dismissing Appellant from employment with the school system, Appellant was given the opportunity to compete for other non-driving positions in light of her satisfactory work performance throughout the years. When Appellant failed to apply for any vacant positions by the January 1, 1998 deadline, the Deputy Superintendent of Schools reviewed Appellant's status and notified her that her employment was terminated effective January 16, 1998 for "being involved in three preventable accidents with appreciable damage over a twenty-four month period." The letter further advised Appellant that the decision was in accordance with MCPS Regulation GDJ-RB – "Discipline or Discharge of Supporting Services Employees," and that Appellant could appeal the decision pursuant to the grievance procedures in the collective bargaining agreement between the local board and the Support Services Union.

Appellant appealed her termination to the local superintendent.³ The matter was assigned for review to hearing officer Robert S. Shaffner who denied the complaint, explaining:

An investigation and review of the accidents was undertaken by the MCPS Department of Personnel Services, which found them to be preventable. At the hearing, a complete report of the review was presented in writing and orally by the MCPS personnel and transportation representatives. All proper procedures were clearly followed.

The complainant contends that all procedures were not properly followed and that she should be returned to her permanent position. She admitted that she did not take advantage, during a six- month unpaid leave time-frame, to compete for other non-driving positions for which she might be eligible.

After reading all the written evidence presented and listening to all the oral testimony given, I find no violation of MCPS Administrative Regulation GJD-RB, "Discipline or Discharge of Supporting Services Employees.

The local superintendent adopted the hearing officer's decision.

²COMAR 13A.06.07.05C(3)(e) states: "A driver who has more than two preventable accidents involving appreciable damage or personal injury in any 24-month period is permanently disqualified from operating a school vehicle in Maryland."

³Appellant initially submitted a Complaint for a Declaratory Judgment in the Circuit Court for Montgomery County seeking reinstatement and back pay. That matter was stayed pending the outcome of the appeal to the State Board.

Appellant further appealed to the local board. In response to the appeal, the local superintendent submitted a memorandum dated July 7, 1999 stating in part:

In reviewing Ms. Grauel's third accident within two years, the ARB determined, based on statements and evidence presented to it, that the employee contributed to the accident by failing to control speed and failing to anticipate an oncoming vehicle in order to yield when practical. Since the driver did not do everything possible to avoid or prevent the collision, the ARB concluded unanimously that the April 17, 1997, accident was preventable. With the determination of a third preventable accident in a 24-month period, Ms. Grauel was permanently disqualified from operating a school bus in Maryland pursuant to COMAR 13A.06.07.05C(3)(e).

In an opinion issued August 24, 1999, the local board upheld Appellant's dismissal from employment with the school system.

ANALYSIS

There are State and local procedures for the review of a school vehicle accident. COMAR 13A.06.07.05C(3)(b) only requires that the accident be reviewed by the local transportation staff. MCPS Regulation EBI-RA – "Review of Preventable Accidents and the Bus Accident Review Committee (BARC)" provides a two-tiered level of review. First, the BARC makes a determination regarding preventability. If the bus driver is dissatisfied with BARC's decision, the driver is entitled to a first level appeal before the committee. Thereafter, if the bus driver is unhappy with the first level of review, the driver may have a second level appeal before the Accident Review Board (ARB).

Appellant maintains that she was denied an opportunity to appeal the BARC decision that her September 22, 1995 accident was preventable, and therefore her dismissal based on three preventable accidents should be dismissed. The record discloses, however, that Appellant was offered the opportunity for further review of BARC's findings. In a November 3, 1995 memorandum, the Transportation Training and Safety Supervisor advised Appellant that BARC found her September 22 accident preventable, and that she had "the right to appeal this decision at the next level, which is the Administrative Review Board." Although Appellant now claims that she was never notified of the BARC decision, the record demonstrates that the memorandum was mailed to her on November 2, 1995. Thus, Appellant was notified of her right to appeal BARC's decision but failed to exhaust the administrative remedies available to her at the time of the accident.

As for the merits of the termination decision, based on our review of the record, we believe that the local board acted as required by law. As noted above, COMAR

13A.06.07.05C(3) provides that “[a] driver who has more than two preventable accidents involving appreciable damage⁴ or personal injury in any 24-month period is permanently disqualified from operating a school vehicle in Maryland.” We note that the State Board has previously upheld the disqualification of school bus drivers due to student safety concerns. See *Hyman Blumenstock v. Board of Education of Howard County*, MSBE Opinion No. 97-28 (June 25, 1997); *Crystal R. Jones v. Board of Education of Kent County*, 7 Op. MSBE 149 (1995); *Byron Fieldon v. Anne Arundel County Board of Education*, 4 Op. MSBE 220 (1985).

Here, the local board acted in accordance with the mandates of State regulation. Appellant had three accidents involving property damage in excess of \$500 which were deemed preventable within a 24-month time span. Appellant argues that the third accident was not preventable because the police officer indicated that Appellant was “not at fault.” However, as noted by the local board, the term “preventable accident” as defined in COMAR 13A.06.07.01 is not necessarily synonymous with the definition of the term “fault” as used by the police in the preparation of an accident report. As stated above, “preventable accident” is defined in COMAR 13A.06.07.01B(6) as “an accident in which the driver failed to do everything the driver reasonably could have done to prevent it, according to accepted standards of the National Safety Council.” Here, the ARB reviewed the BARC decision and concurred that Appellant contributed to the accident by failing to control speed and failing to anticipate an oncoming vehicle in order to yield when practical. Given the stringent definition of preventable accident, we find that Appellant has presented nothing to indicate that the ruling was flawed.

With regard to Appellant’s claim that the termination decision was discriminatory, the superintendent explained:

Of the ten cases [Appellant] cited, she failed to identify two of the individuals who allegedly received preferential treatment. Of the eight other cases she cited, only two in which the same offense (more than two preventable accidents) was alleged to have occurred. In one, the individual driver was never cited for more than two preventable accidents, and in the other, the individual had three accidents between 1990 and 1996, all of which were determined to be ‘not preventable.’ MCPS has consistently and uniformly dismissed any bus driver involved in three preventable accidents in any two-year period that resulted in more than \$500 damage.

Based upon our review of the record, we concur that Appellant has failed to present any evidence of unlawful discrimination. Thus, we do not find that the local board decision is arbitrary, unreasonable or illegal.

⁴Appreciable damage means property damage in excess of \$500. See COMAR 13A.06.07.01B(2).

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Montgomery County.

Edward Andrews
President

Philip S. Benzil
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Reginald Dunn

George W. Fisher, Sr.

Marilyn D. Maultsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

March 22, 2000