

IN THE MATTER OF:
AARON JENKINS
7422 REMOOR ROAD
BALTIMORE, MARYLAND 21207

RE: REQUEST FOR SERVICE RETIREMENT

* BEFORE THE
* COUNTY BOARD
* OF APPEALS OF
* BALTIMORE COUNTY
* CASE NO.: CBA-10-017

* * * * *

OPINION

This matter comes before the Board of Appeals as an appeal from the November 10, 2009 decision of the Baltimore County Retirement System. The Retirement System ruled that the appellant was not entitled to ordinary service related retirement benefits because the appellant's service was not "good and faithful service" as defined in the Baltimore County Code.

BACKGROUND

The Appellant, Mr. Aaron Jenkins was employed by the Baltimore County School Board for over 29 years. He was employed as a maintenance person in various County public schools. His most recent school assignment was at the Wellwood Elementary School in Baltimore County. On or about February 29, 2008 the Appellant was arrested on the campus of the Wellwood school and charged with three (3) drug related offenses. At his trial on August 11, 2008, the Appellant pled guilty to the charge of possession of a controlled dangerous drug. The other two charges were dropped by the State's Attorney for Baltimore County.

As the result of Appellant's guilty plea he was sentenced to four (4) years of incarceration with the entire sentence suspended. He was then placed under three (3) years probation to the court system and required to pay a fine in the amount of Five Hundred Dollars (\$500.00).

The record does not disclose the events that occurred between the guilty plea and the Appellant's application for service related retirement benefits.

ISSUE

Does the Appellant's guilty plea to the criminal charges brought against him constitute a lack of "good and faithful service to his employment so as to bar his receipt of ordinary retirement benefits?

DISCUSSION

The hearing before the Board in this matter was conducted on March 25, 2010. The Baltimore County Retirement System was represented by Suzanne Berger, Assistant County Attorney, Baltimore County Office of Law. Mr. Aaron Jenkins was represented by Jordan I. Selzer, Esquire. Several witnesses were call to testify on behalf of the Appellant. Each of these witnesses were employees of the Baltimore County School System and each offered glowing references concerning appellant's job performance and character based upon their observations of Appellant during various times in his employment history with the school system. The County placed into evidence the incident report of February 29, 2008 and the public data information concerning the trial and sentencing of Appellant.

The evidence presented at the hearing of this matter disclosed no dispute that Appellant's job related performance was satisfactory up to the event of 2/29/2008. The Appellant's arrest and subsequent guilty plea to the CDS (Controlled Dangerous Substances) charge apparently formed the basis for the decision of the Baltimore County Retirement System. The November 10, 2009, -one page notification to Mr. Jenkins,- of the decision of the Baltimore County Retirement System contained the following language:

"To qualify for a service retirement allowance under Baltimore County Code, Article 5, Section 5-1-213 you must meet the criteria set forth, including the accumulation of a certain period of "creditable service". Article 5, Section 5-1-201 defines "creditable service" as "prior service plus membership service for credit is allowable as provided is allowable as provided in Article 5, Section 5-1-208 through 5-1-212 of the Code." Membership service is further defined in Article 5, Section 5-1-201 as "honorable and faithful service as an employee rendered while a member of the of the retirement system".

The Board reviewed the evidence and legal arguments presented on the question of whether the Appellant's arrest and conviction can serve as the basis for a determination of the Retirement Board that his service was not "honorable and faithful service".

Baltimore County relied, among other things, on the case of Employees' Retirement System of Baltimore County v. Brown 186 Md. App. 293, 973 A.2d 879 (2008). In the Brown case a police officer was denied ordinary service disability retirement benefits based upon his off-duty use of illegal drugs. The Court of Special Appeals held that the Officer's off-duty use of drugs did not, as a matter of law, constitute a lack of "good and faithful service" as defined in the Baltimore County Code. The Court found instead that the issue of "good and faithful" service was an issue of fact for determination by the Baltimore County Board of Appeals.

The attorney for the retirement system submitted into evidence the Baltimore County School system's Drug Free Workplace Rule # 4001. The opening paragraph of the foregoing Rule states as follows:

I. Employees of the Baltimore County Public School System (BCPS) are expected

to act as role models for students. The unlawful manufacture, distribution, possession, or use of a controlled substance or alcohol in any quantity in the workplace or at any school-sponsored event is prohibited.

The foregoing policy sets out administrative penalties and procedures to address violation of the rule. The stated penalty can include termination from employment. There was no evidence presented at the hearing before this Board as to whether the Appellant was offered an administrative option other than his termination from employment.

In reviewing the charging documents in the Appellant's criminal case the Board notes that he was arrested on the driveway of the school where he worked while in his personal vehicle. The CDS was found in his vehicle. There is a question as to the whether the events occurred during school hours. However it appears from the evidence that the Appellant was on-duty at the time of his arrest and that the arrest occurred during a recreational break taken by the Appellant between the end of the school day and the beginning of the after school activities.

The Board concludes that it is Appellant's violation of the Baltimore County Public School drug free workplace rule that establishes the factual basis for our conclusion that Appellant failed to render "good and faithful" service to his employer, thereby disqualifying him from the retirement benefits which he seeks. In the Board's opinion, the Appellant's use of illegal substances while on school property and during hours when students may be present as a part of their school related activities demonstrates a lack of "good and faithful" service to the Baltimore County School System.

CONCLUSION

Accordingly, for these reasons, this Board agrees with the decision of the ERS Board of Trustees and its decision dated November 10, 2009, is affirmed, and the ability to vest in the

ERS is denied based on the determination that service as employee of Baltimore County was not honorable and faithful and therefore not creditable toward a retirement allowance.

ORDER

IT IS THEREFORE THIS 6th day of August, 2010, by the Board of Appeals of Baltimore County

ORDERED that the decision of the Board of Trustees of the Employees' Retirement System dated November 10, 2009, be and the same is hereby **AFFIRMED**; and it is further

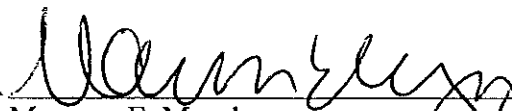
ORDERED that the ability to vest in the Employees' Retirement System of Baltimore County's (ERS) is denied due to the determination that service as employee of Baltimore County was not "honorable and faithful" and therefore not creditable toward a retirement allowance.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

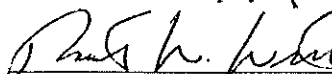
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Wendell H. Grier, Panel Chair



Maureen E. Murphy



Robert W. Witt