

IN THE MATTER OF
GREGORY GARLISS - APPELLANT
40 WASHINGTON ROAD
NEW FREEDOM, PA 17349

RE: Appeal of Decision Denying Disability
Retirement benefits

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-12-021

* * * * *

OPINION

This case is an appeal from the decision dated October 11, 2011 from the Board of Trustees of the Employees' Retirement System (herein referred to as the "ERS") denying Mr. Garliss' application for service retirement benefits on the basis that Mr. Garliss did not provide "honorable and faithful service" as required by *Baltimore County Code*, §§5-1-201-213 while employed for Baltimore County. Mr. Garliss appealed the ERS decision to this Board. A hearing was held on March 20, 2012. Mr. Garliss was not represented and appeared *pro se* and the Employees' Retirement System was represented by Suzanne Berger, Assistant County Attorney. Non-public deliberations were held on May 3, 2012.

FACTS

Mr. Garliss worked for Baltimore County on two separate occasions. From July 3, 1992 to sometime in 2000 he worked for the school board. He left to become an independent contractor in 2000 and withdrew the monies in his retirement account. He returned to Baltimore County on March 27, 2001 and began working for Recreation and Parks as a Laborer 1 employee.

In 2008, Mr. Garliss received a written reprimand for poking his supervisor in the chest following a conversation regarding a lost radio. He received a second written

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reprimand in 2008 after he damaged the ladder racks on top of his truck while riding through the parking garage at Towson Town Mall. He received a third written reprimand in 2008 for drinking Twisted Tea, an alcoholic beverage, while at work (County's Exhibit #1). As a result of these incidents, Mr. Garliss received a notice of suspension (County's Exhibit #2) and a notice of removal (County's Exhibit #3). A grievance hearing was held on May 21, 2008 (County's Exhibit #4) however, as part of a Grievance Settlement Agreement, Mr. Garliss withdrew his grievance on the termination of his employment, accepted a ten (10) day suspension, and agreed to refrain from any physical confrontations while employed by the Department of Recreation and Parks.

In July, 2010, Mr. Garliss received an agency warning for yelling obscenities at a produce vendor at Pleasant Plains Elementary School. In March, 2011, Mr. Garliss admitted to his supervisor that he put his hands on a fellow employee during a confrontation. A grievance was filed and it was recommended that Mr. Garliss be suspended without pay from March 29, 2011 through April 8, 2011. A grievance hearing was held and a recommendation for termination was upheld. Mr. Garliss filed an appeal of that recommendation (County's Exhibit #5).

Prior to the Appeal being heard, Mr. Garliss entered into a Settlement Agreement with Baltimore County whereby he would resign his employment, in lieu of termination, affective April 9, 2011; the Notices of Suspension and Dismissal at issue and Charges of Dismissal regarding the March 2011 incident would be removed from his personnel file; if any future employers contact Baltimore County, the County would only provide Mr. Garliss' title, dates of employment, and resignation date, and not provide any disparaging

information; Mr. Garliss would withdraw his grievance concerning his termination and suspension, and he would not be eligible for any future employment with Baltimore County (County's Exhibit #6).

Following his resignation, Mr. Garliss contacted the Board of Trustees in order to obtain his pension benefits . The Board of Trustees considered his eligibility and denied his request for service retirement based on their determination that he had not performed honorable and faithful service to the County (County's Exhibit #7). This appeal followed that denial of retirement benefits.

The County argues that the Board of Trustees could consider any issue in determining pension benefits. The Settlement Agreement does not say that the Board can not consider employment issues.

Mr. Garliss testified on his own behalf. He testified that the May 2008 incident occurred while preparing for the May Festival. He had been asked to take out items to be repaired or to be picked up. They used radios to communicate. He became distracted and a radio was lost.

Following his separation from the County he filed for unemployment benefits. A witness, Serena McConville, was present at the unemployment hearing and testified. This witness never testified at the County hearings. The Administrative Law Judge and the Department of Labor, Licensing, and Regulation's Board of Appeals found in Mr. Garliss' favor (Appellant's Exhibit #2). They found that the County did not support a finding of misconduct or gross misconduct on the part of Mr. Garliss.

Mr. Garliss was represented by Counsel at the time the Separation Agreement was negotiated. He testified that he believed that retirement benefits were included in the

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Separation Agreement. He acknowledged that the Agreement is silent as to retirement benefits. He argues that he had provided good and faithful service to the County and had received letters of recommendation and appreciation from the County Executive.

Mr. Garliss' wife next testified. Mrs. Garliss testified that retirement benefits were discussed. Their attorney told them that the 2011 incident would be removed from Mr. Garliss' personnel file and would not be part of retirement consideration. Their attorney forwarded to them emails showing what the Assistant County Attorney said regarding retirement benefits(Appellant's Exhibit #3). The emails showed that the Appellant's attorney was advised that the decision to remove the 2011 incident from Mr. Garliss' personnel file had no binding effect on the Board of Trustees.

The County proffered the testimony of Tim Winters. Baltimore County has a zero tolerance policy for workplace violence. One employee can not put his or her hands on another individual.

ISSUES

1. WHETHER THE BOARD OF TRUSTEES ERRED IN FINDING THAT MR. GARLISS' SERVICE WITH BALTIMORE COUNTY WAS NOT HONORABLE AND FAITHFUL AND THEREFORE, NOT CREDITABLE TOWARDS RETIREMENT?
2. WHETHER THE BOARD OF TRUSTEES ERRED IN CONSIDERING THE 2011 INCIDENT IN DETERMINING WHETHER MR. GARLISS' SERVICE TO THE COUNTY WAS HONORABLE AND FAITHFUL?

Mr. Garliss' Position

Mr. Garliss, contends that his service to Baltimore County was honorable and faithful. He points to the decision from the unemployment hearing to support his position. He further argues that the Board of Trustees should not have considered the 2011 incident in determining whether his service was honorable and faithful given that the incident was removed from his personnel file. He says that he would not have entered into the Separation Agreement had he known that the Board of Trustees could consider the incident and deny him his pension.

Employees' Retirement System's Position

The County argues that the Board of Trustees has discretion to determine what constitutes "honorable and faithful service." The County, citing *Baltimore County Board of Trustees of Employees Retirement System v. Comes*, 247 Md. 182 (1967), argues that it is not enough to simply have the requisite number of years of "service" as an employee but that such service must also be "honorable and faithful" before retirement benefits will be paid.

The County argued that the Board of Trustees is not required to just look at a personnel file or records to make its decision. They look at specific events. Do the specific events show a failure to provide honorable and faithful service? The decision of the Board of Trustees is based on a presentation to the Board of all records. Records which are not part of the employee's personnel file can still be considered. They are not limited to the personnel file to determine whether the employee provided honorable and faithful service. Even if an agreement was reached to keep certain information out of a personnel file, no other agency can bind the Board of Trustees as to what they are allowed to consider. The Board was not a party to the Separation Agreement.

The County argued that in entering into the Separation Agreement, Mr. Garliss received the benefit of not having prospective employers know about the 2011 incident when calling for a

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reference. The issue of retirement benefits was discussed but, as was referenced in an email between Mr. Garliss' attorney and County Attorney negotiating the Separation Agreement, they could not bind the Retirement Board.

Additionally, the County argues that Mr. Garliss' behavior on numerous other occasions resulting in verbal and written warnings could have warranted termination. He accepted a suspension in 2008 and agreed to not repeat certain conduct which was in violation of County Personnel Rules. His behavior in total could be found to demonstrate that he had failed to perform honorable and faithful service.

DECISION

"Creditable service" means "prior service plus membership service for which credit is allowable or approved as provided in § 5-1-208 through 5-1-212 of this subtitle." BCC §5-1-201. "Membership service is defined as honorable and faithful service as an employee rendered while a member of the retirement system." BCC, §5-1-201(o). Accordingly, in order to be eligible for a retirement benefits from Baltimore County, an employee must have rendered creditable service for the period of time in which he served in the capacity as an employee of Baltimore County. In addition, the BCC requires the service rendered to be "honorable and faithful."

The Court in *Combs, supra*, held that service must be "honorable and faithful or the benefits will be denied." That Court said:

In considering the county pension laws as a whole, we think it is clear that all employees, besides having completed the services for which credit was allowable, must also have complied with the obligation to perform them faithfully in order to qualify as a recipient of retirement benefits.

Id. at 186. The Court in *Combs* explained that all employees of the pension systems are subject to “behavioral standards.” *Id.* The determination of what constitutes honorable and faithful service lies with the Board of Trustees. See *Bucher v Ober*, 204 Md. 568, 105 A.2d. 480 (1954). The *Combs* Court cited the holdings in *Ober*, *supra*, and *Kone*, *supra*, to emphasize that the denial of retirement benefits is neither arbitrary nor capricious where the employee has not met the “faithful service” test. *Id.* The *Combs* Court cited other Maryland cases, the holdings of which, were to the same effect that: “an employee who willfully breaches a duty owed by him to his employer forfeits his right to a bonus or other accrued compensation.” *Id.*

Quoting *Fromm v. Board of Directors of Police and Firemen's Retirement System*, 81 N.J. Super. 138 (1963), the Court in *Combs* pointed out:

After observing that the failure of a statute to make honorable service a condition precedent to the grant of a * * * pension did not eliminate the honorable service requirement, said * * * that ‘one of the fundamental purposes of the pensioning of civil servants is to secure good behavior and the maintenance of reasonable standards of discipline during service.’

Id. at 188. *Emphasis Added.*

The *Combs* Court citing *People ex rel. Hardy v. Green*, 87 App. Div. 589, 674, 84 N.Y.S. 673 (App. Div. 1903), touched on the nature and purpose of a civil pension:

The provision in the statute * * * is, like all pension provisions, designed to encourage long and faithful service * * *. While there is no provision in the statute to the effect that the applicant for retirement must be in good standing at the time, it must be assumed, from the very nature and purpose of a pension, that no successful application could be made by one who was under suspension pending the trial of charges relating to his official conduct. The pension roll is a roll of honor- a reward of merit, not a refuge from disgrace; and it would be an absurd construction of the language creating it to hold that the intention of the Legislature was to give a life annuity to a person who, on their merits, as

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distinguished from mere time of service, might be dismissed from the force for misbehavior.’

The appellate courts have made clear that failure to perform honorably and faithfully need not be based on criminal conduct alone. Individuals who are derelict in their duties and cost the County money, or individuals who fail to perform their duties in a competent manner which would reflect adversely on the Baltimore County workforce, would not be rendering honorable and faithful service.

In the instant case, Mr. Garliss’ behavior on numerous occasions fell below the standard of honorable and faithful service to the County. In 2008, he received reprimands for poking his supervisor in the chest, damaging a work truck and drinking an alcoholic beverage during work hours. He entered into a Grievance Settlement Agreement whereby he agreed to refrain from putting his hands on another employee. He was reprimanded again in 2010 for yelling obscenities at a produce vendor. The incident which gave rise to the instant case occurred in 2011 when Mr. Garliss was accused of putting his hands on a fellow employee after he agreed in 2008 not to do so. Rather than be terminated, Mr. Garliss entered into a Separation Agreement. Mr. Garliss was represented by Counsel in the negotiation of that agreement. The issue of Mr. Garliss’ eligibility for retirement benefits was discussed but was not addressed in the Agreement. In an email to Mr. Garliss’ attorney, the County Attorney negotiating the Separation Agreement tells him that she can not bind the Retirement Board. Knowing that, Mr. Garliss chose to enter into the Separation Agreement. He can not now claim he would not have done so if he knew that the Retirement Board would consider the 2011 incident.

Accordingly, this Board will uphold the denial of Mr. Garliss’ application for retirement

benefits.

ORDER

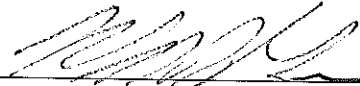
IT IS THEREFORE THIS 7th day of June, 2012, by the Board of Appeals of Baltimore County

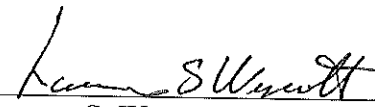
ORDERED that the decision of the Board of Trustees of the Employees' Retirement System of Baltimore County as set forth in a letter dated October 11, 2011, which Mr. Garliss' application for service retirement benefits was denied based on the determination that his service as an employee of Baltimore County was not honorable and faithful and therefore not creditable toward a retirement allowance is **SUSTAINED**; and it is further

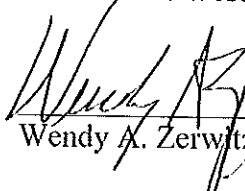
ORDERED that for the reasons stated in the foregoing Opinion, Mr. Garliss' request for service retirement benefits be and the same is hereby **DENIED**.

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, Chairman


Lawrence S. Wescott


Wendy A. Zerwitz