SARAH IANACONE,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
FREDERICK COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 24-05

OPINION

INTRODUCTION

Sarah Ianacone, ("Appellant"), appeals the decision of the Frederick County Board of Education ("local board") affirming the Superintendent's decision to uphold the Appellant's termination of employment. The local board filed a response maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

There are no material facts in dispute in this matter. Tim Thornburg, Director of Human Resources of Frederick County Public Schools ("FCPS"), terminated the Appellant because she failed to process 517 teacher certifications, 155 course renewals and 140 tuition reimbursements – an unprecedented backlog which had the potential to jeopardize FCPS's mission. The Appellant does not dispute the backlog of work she failed to process. She argues that the decision to terminate her was unreasonable and based on retaliatory reasons because of her requests for reasonable accommodations under the Americans with Disabilities Act ("ADA") and for filing charges of discrimination with the Equal Employment Opportunity Commission ("EEOC").

Appellant worked as a Personnel Officer (Certification) ("POC") on the Talent Acquisition & Management team within FCPS Human Resources Department. Appellant was hired in June of 2013 and worked in this role until her termination on September 20, 2021. Appellant had no previous disciplinary actions prior to her termination. Appellant holds the status of Certified Authorized Partner ("CAP"), which functions as a liaison to the Maryland State Department of Education ("MSDE"). Appellant's primary responsibilities included processing new and renewal certificates for all teachers and certified staff and at times, advising teachers and certified staff of requirements to advance to the next level, processing tuition reimbursement and course approval requests and ensuring that these actions occur in accordance with the requirements of the negotiated agreement and State law. (Local Bd. Response "Response," Ex. 1 at 5, Ex. 2 at 2). State law requires all teachers, administrators, or specialists in Maryland public schools to obtain and maintain a valid certificate appropriate to their field. All individuals must renew their certificates within 90 days of the expiration date in order for the certificate to be continuous. COMAR 13A.12.01.11A(2).

From May 2018, through December 2019, and then, again, at the end of July 2021 until Appellant's termination, Appellant's direct supervisor was Gina Keefer, Senior Manager of Talent and Acquisition for Certified Staff.[1] During these relevant times, Tim Thornburg, Director of Human Resources, was Appellant's second line supervisor. Mr. Thornburg as the Director oversees all the operations of Human Resources composed of four divisions, with each division managed by a senior manager who reports to him. (Response, Ex. 2 at 8). Mr. Thornburg relied upon his direct four senior managers to manage, and to bring any problems to his attention. (Response, Ex. 2 at 4).

Tuition Reimbursement and Course Approvals

In addition to the certification duties, the Appellant was also responsible for timely advising teachers and certified staff of requirements to advance to the next level, processing tuition reimbursement and course approval requests and ensuring that these actions occur in accordance with the requirements of the negotiated agreement. During the initial time period that Ms. Keefer supervised the Appellant, Ms. Keefer had no issues with Appellant's job performance and the Appellant was able to complete the certification work and also tuition reimbursement and course approvals for certified staff. (Response, Ex. 2 at 9). However, in mid-2018, the Appellant requested that tuition reimbursement and course approval responsibilities be transferred away from her. Ms. Keefer agreed to the transfer on a trial basis. *Id.* As discussed below, FCPS granted Appellant a disability reasonable accommodation to telework beginning November 13, 2020, through August 6, 2021. On April 1, 2021, while Mr. Curtis was Appellant's supervisor, the course and tuition responsibilities were moved back to the Appellant. (Response Ex. 12 at 3). FCPS needed the person who temporarily took over the course approval and tuition reimbursement responsibilities to focus on recruitment and hiring. Management determined that the course approval and tuition reimbursement duties aligned more closely with certification. (Response, Ex. 2 at 9). The Appellant did not agree with management's decision to transfer tuition reimbursement and course approvals back to her. *Id.*

To assist with the additional work, FCPS provided the Appellant with an additional staff member for a total of seven hours per week. (Response, Ex. 2 at 7, Ex. 9). In addition to the extra part-time assistance, Appellant had a full-time assistant who was a Certified Authorized Partner Associate ("CAPA").[2] (Response, Ex. 2 at 7). Mr. Thorton believed that the Appellant should have been able to perform all of her primary duties, including the course approval and tuition reimbursement responsibilities, even without the additional assistance. *Id*. The Appellant disagreed with these expectations, and she communicated with management her concerns on numerous occasions. (Appeal, Ex. 42 at 8). She considered this decision a "managerial blunder." *Id.* On June 8, 2021, the Appellant sent an email to Mr. Scott and Mr. Thornburg and advised them that she felt the additional responsibilities were unrealistic and that her work on certification would suffer. *Id.*

[1] Senior Manager Curtis Scott was Appellant's direct supervisor from late 2020 until his retirement on July 16, 2021. (Response, Ex. 2 at 6).

[2] The CAPA could perform many of the same duties as the Appellant but could not sign off on a certificate or enter certain data into the MSDE system. *Id.*

Disability Accommodations

In August 2020 during the COVID-19 pandemic, FCPS announced that beginning in November 2020, all Human Resources staff would be required to return to work in the office at least one full workday per week. The Appellant requested instead that she be permitted to telework during the State of Emergency in Maryland as an ADA accommodation to reduce her risk of exposure to COVID-19 due to her asthma and the health conditions of other family members. (Response, Ex. 2 at 14, Ex. 15). FCPS has a Standard Operating Procedure for teleworking. (Response, Ex. 17). The local board policy provides that teleworking is a voluntary option extended to employees with the understanding that every job and every employee may not be adaptable for telework, and that the telework can be rescinded or modified by the supervisor or terminated based on employee performance. *Id.*

On November 13, 2020, Sarah Minnick, Senior Benefits Manager, granted the accommodation request on a temporary basis for Appellant to telework from November 13, 2020 to January 13, 2021, with the stipulation that the Appellant was expected to come into the office on the weekends because the Appellant needed access to the staff's physical files to process certification renewals and requests and per FCPS policy, the physical files were not permitted to leave the building. (Response, Ex. 2 at 11-12, Ex. 15). Subsequently, the Appellant requested additional extensions of the temporary accommodation through July 15, 2021.[3] *Id.* In her requests, the Appellant indicated that she was successful in her current telework accommodation and she did not express to Ms. Minnick that she was having difficulty completing her work. *Id.*

By letter to the Appellant dated June 30, 2021, Ms. Minnick granted the Appellant's request for a temporary extension of the accommodation through July 15, 2021. (Response, Ex. 15 at 14). Ms. Minnick also asked the Appellant to provide further clarifying medical documentation to support the continuing request for accommodations and provide a more certain time frame as it was anticipated that Maryland planned to lift the COVID-19 State of Emergency on July 1, 2021. *Id.* Up to this date, Mr. Scott, Ms. Keefer, and Mr. Thornburg had not expressed any concerns to Ms. Minnick about Appellant's telework accommodation. (Response, Ex. 2 at 12).

On July 16, 2021, the Appellant submitted updated medical documentation indicating that the Appellant needed to telework indefinitely. (Response, Ex. 16). After receipt of the documentation, Ms. Minnick spoke with the Appellant about opportunities to support the Appellant's onsite presence and offered to discuss options to accommodate Appellant's concerns regarding COVID-19, including working a hybrid schedule. (Response, Ex. 2 at 12). The Appellant was not willing to work a hybrid schedule. *Id*. Ms. Minnick informed the Appellant that she would discuss the reasonableness of her request for continuing indefinite telework with the Appellant's supervisory staff, as it relates to the essential functions of Appellant's job. *Id.*

Ultimately, Appellant's supervisors did not support her request to telework on an indefinite basis because it became apparent to her managers that she was unable to perform the essential functions of her work under the telework option and she was needed in the office, on at

[3] Extension requested January 15, 2021 granted through February 14, 2021; Extension requested February 11, 2021 granted through March 14, 2021; Extension requested March 15, 2021 granted through April 19, 2021; Extension requested April 13, 2021 granted through May 19, 2021; Extension requested May 18, 2021 granted through June 30, 2021. (Response, Ex. 15).

least a hybrid schedule, to address the unprecedented backlog in certification work. (Response, Ex. 2 at 7 & 10). By letter dated August 3, 2021, Ms. Minnick advised Appellant that her request for indefinite extension of her telework accommodation was not approved because she was needed in the office to fulfill the essential functions of her job including but not limited to addressing the backlog of certification work. (Response, Ex. 18). Ms. Minnick offered to work with her to discuss accommodations to support her return to the building. *Id.*

On August 5, 2021, the Appellant indicated to Ms. Minnick that she was going to appeal the denial of her ADA telework request and she requested her leave options pending resolution of her appeal. (Response, Ex. 20). Ms. Minnick supplied the necessary information for filing an appeal and to request leave under the Family Medical Leave Act ("FMLA"). On or about August 20, 2021, the Appellant provided a Certification of Healthcare Provider to request leave under the FMLA starting August 9, 2021, and ending November 1, 2021. (Response, Ex. 19). The Appellant's leave request was granted through October 31, 2021. (Response, Ex. 2 at 13). On August 23, 2021, Ms. Minnick informed Ms. Keefer of Appellant's FMLA approval. *Id.* On August 23, 2021, the Appellant appealed the denial of her request for telework as an ADA accommodation. On October 14, 2021, the Superintendent denied the Appellant's ADA accommodation request appeal. The Appellant did not appeal that decision. (Response, Ex. 1 at 2). Accordingly, that issue is not before us.

The Investigation of the Back Log

Appellant was permitted to telework from the beginning of the pandemic until she left on medical leave on August 6, 2021. On August 2, 2021, the Appellant asked Ms. Keefer if she could list Ms. Keefer as a reference for her job search. (Response, Ex. 11). That same day, at a leadership staff meeting on August 2, 2021, the Appellant shared a list of work that she had not completed including the following:

- 155 course approvals;
- 140 tuition reimbursements;
- 159 course approval emails;
- 116 evaluations for certificate endorsements needed review and processed;
- 204 2020 new hire certificates needed reviewed and processed;
- 313 June 2021 certificate renewals needed reviewed and processed; and
- 136 emails certificated-related emails needed review and a response.

(Response, Ex. 12).

The amount of backlog was concerning to Appellant's supervisors and Ms. Keefer who, with 13 years of experience in human resources, had never seen such a significant backlog. (Response, Ex. 3, 125:18-22). On August 3, 2021, Ms. Keefer advised the Appellant by email that Mr. Thornburg wanted to meet with the Appellant to discuss his concerns regarding the backlog. (Response, Ex. 12 at 3). The Appellant did not meet with Mr. Thornburg as requested. *Id.* On August 4, 2021, Ms. Keefer met with the Appellant to determine the reason for the backlog. The Appellant informed Ms. Keefer that she did not have the resources or sufficient time to complete her work. (Response, Ex. 2 at 3). Ms. Keefer and Mr. Thornburg, both experienced in certification matters, concluded that Appellant's explanation was not sufficient. (Response, Ex. 2 at 3 & 9).

FCPS conducted an investigation to determine what may have caused such significant backlog of Appellant's work. During most of the time the backlog occurred, the Appellant was working remotely. Even though the Appellant was working remotely, she still had to come to the administration building to pull and access files to process certifications as staff were not allowed to take home personnel files and FCPS at that time did not have an electronic filing system. (Response, Ex. 2 at 5). From March 2021 through June 2021, security data showed that the Appellant had only accessed the administration building on two occasions. (Response, Ex. 2 at 6, Ex. 9). In addition, data provided by the technology office showed that the Appellant's logins to her VPN system, which was required for her to perform certification work, were irregular, late and, in some instances, did not conform with expected work hours. (Response, Ex. 2 at 25, Ex. 8).

Ms. Keefer also contacted MSDE to determine the number of certificates processed exclusively by the Appellant. The data received from MSDE revealed that the Appellant processed a total of 34 certificates in a four-month period from April 2021 through July 2021. (Response, Ex. 2 at 3, Ex. 7). Additional data from MSDE confirmed that between January 22, 2020, and June 11, 2021, (18 months), only 86 certificates for new hires were processed. *Id.* Between December 11, 2020, and August 6, 2021, (8 months), 364 certificate renewals for the 2020-2021 school year were processed. (Response, Ex. 2 at 3).

Ms. Keefer deemed this productivity rate unacceptable. *Id.* By way of comparison, a retired FCPS staff member who was brought in to assist with the backlog was able to process 24 certificates within a four-hour period. (Response, Ex. 2 at 3). The CAP staff member who took over the Appellant's duties processed a total of 327 certificates in a four-month period. The staff member did so while also handling tuition reimbursements and course approvals and without the additional administrative support that was provided to the Appellant. (Response at 6, Ex. 2 at 11).

Appellant's Termination

Based on the results of the investigation, Ms. Keefer recommended to Mr. Thornburg that the Appellant should be terminated for unsatisfactory performance due to Appellant's failure to timely process teacher certificates. (Response, Ex. 2 at 8). Mr. Thornburg agreed with this recommendation and made the decision to terminate the Appellant because of her failure to perform the essential functions of her job that created a serious backlog of duties and responsibilities that she did not perform. (Response, Ex. 1 at 2). By letter dated September 17, 2021, and in accordance with Local Board Policy 319, *Administrative, Management and Technical (AMT) Group*, Section 319.3, B.5, Mr. Thornburg notified the Appellant of his intent to terminate her effective September 20, 2021, due to unsatisfactory performance.[4] (Response, Ex. 12). Mr. Thornburg's letter offered to meet with the Appellant, virtually or in person, to discuss the termination. *Id.* On September 27, 2021, the Appellant appealed the termination to the Superintendent. (Response, Ex. 1).

[4] The termination letter also informed the Appellant that she would remain on paid status based on her pre-approved FMLA leave through November 1, 2021.

EEOC Charges

Meanwhile, on August 31, 2021, prior to the termination decision, the Appellant filed a charge with the EEOC alleging that FCPS unlawfully failed to accommodate, discriminated against, and retaliated against the Appellant in violation of the ADA. (Appeal at 4). On September 22, 2021, the Appellant amended her charge with the EEOC. *Id.* HCPS received notice of the EEOC charges on or about October 6, 2021. (Response, Ex. 1 at 1). Counsel for both parties agreed to stay the termination appeal while the parties sought resolution to the EEOC matter through mediation. *Id*. Attempts to mediate the charges were unsuccessful and the parties ultimately entered into a tolling agreement to stay the EEOC action pending resolution of this appeal. *Id.*

Appeal

On February 18, 2022, Dr. Michael Markoe, Deputy Superintendent serving as the Superintendent's Designee, and FCPS counsel met with the Appellant and her counsel to hear the reasons for her appeal of her termination. On September 30, 2022, Dr. Markoe issued his decision on the Appeal and upheld Appellant's termination. (Response, Ex. 1). Superintendent Dr. Cheryl L. Dyson concurred with the decision. *Id.*

On October 27, 2022, the Appellant appealed the decision to the local board pursuant to §4-205(c)(3) of the Education Article. The local board assigned a Hearing Examiner, Roger C. Thomas, Esq. for this appeal pursuant to §6-203 of the Education Article. An evidentiary hearing date was set for March 23-24, 2023. On March 20, 2023, Appellant, through her counsel, informed FCPS of her choice not to attend the hearing that she requested. Instead of presenting testimony at the hearing, the Appellant requested that she submit a post-hearing brief with exhibits. The parties agreed that Appellant would provide written submission of documents within 30 days after receipt of the transcript of the appeal proceeding. The parties agreed that the Superintendent would also submit a post-hearing brief. The Superintendent elected to also present witnesses and exhibits at the March 23, 2023, appeal hearing. (Response, Ex. 2).

On September 29, 2023, the Hearing Examiner issued his written Findings of Fact, Conclusions of Law, and Recommendation. He concluded that FCPS had sufficient information from which they could reasonably conclude that the Appellant was not performing the essential functions of her job and he recommended that the local board uphold the Appellant's termination. He further concluded that FCPS did not retaliate against Appellant by terminating her due to her requests for ADA accommodations or for filing EEOC charges of discrimination. (Response, Ex. 2).

On October 25, 2023, the local board issued its Decision and Order adopting the Hearing Examiner's Findings of Facts, Conclusion of Law, and Recommendation and affirmed the Superintendent's decision to terminate the Appellant. (Appeal, Ex. 46).

This appeal followed.

STANDARD OF REVIEW

A non-certificated employee is entitled to administrative review of a termination pursuant to §4-205(c)(3) of the Education Article. *See Stafford v. Baltimore City Bd. of Sch. Comm'rs*,

MSBE Op. No. 20-37 (2020). A decision of the local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board is considered *prima facie* correct. COMAR 13A.01.05.06A. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.06A. A decision may be arbitrary or unreasonable if a reasoning mind could not have reached the conclusion the local board or local superintendent reached. COMAR 13A.01.05.06B(2). Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANAYLSIS

The decision for review is the local board decision of October 25, 2023, which adopted the Hearing Examiner's recommendation. It is the Appellant's burden to show that the decision was arbitrary, unreasonable, or illegal. The Appellant attacks the board decision in three ways. First, she argues that the termination was unreasonable. Second, she challenges the amount of due process afforded her. Third, she claims the local board's decision is unlawful, alleging that she was terminated in retaliation for requesting reasonable accommodations under the ADA and for filing a charge of discrimination with the EEOC.

Appellant's Termination was not Arbitrary or Unreasonable

The Appellant argues that the local board decision is unreasonable because the local board "summarily upheld the decision of the Superintendent" and the local board ignored the evidence by "rubber stamping" the termination decision. Appeal, at 1 & 5. This argument has no support whatsoever and is contrary to the fully developed record in this matter. The local board based its decision on thorough written findings of fact and law of the appointed Hearing Examiner, who heard under-oath testimony by all HCPS staff involved in the decision to terminate the Appellant. The Hearing Examiner also carefully reviewed FCPS documentation, Appellant's documentation, Appellant's affidavit, and her witnesses' affidavits before reaching his decision. The uncontroverted facts in this record clearly establish that the basis for the termination decision was due to the Appellant's failure to perform the essential functions of her position.

The existence of the backlog of the Appellant's work was evidenced by the data the Appellant disclosed at the August 2, 2021, staff meeting: 155 course approvals; 140 tuition reimbursements; 159 course approval emails; 116 evaluations for certificate endorsements needed review and processing; 204 2020 new hire certificates needed review and processing; 313 June 2021 certificate renewals needed review and processing; and 136 emails certificated-related emails needed review and a response.

Arguably, her supervisors knew or should have known that a problem was festering in certification before this date,[5] but the record is clear that this is the date on which the alarm bells were sounded. The record establishes that as soon as her supervisors learned of the full extent of the backlog, Mr. Thornburg and Ms. Keefer, took immediate action to fully understand the reasons for the backlog of Appellant's work and conducted a thorough investigation.

The investigation revealed that the Appellant was not performing her duties in a timely manner while teleworking as a reasonable accommodation. The objective data from MSDE revealed that the Appellant only processed a total of 34 certificates in a four-month period. The investigation also revealed that the Appellant was not coming to the administration building to pull and access personnel files to process certificates as required. FCPS security data showed that the Appellant only accessed the building on two occasions from March 2021 through June 2021. Additional data provided by the technology office showed that the Appellant's login times on the FCPS' VPN system, which she had to access to perform her certification work, were irregular, late and in some instances did not conform with expected work hours. We like the Hearing Examiner give little weight[6] to the evidence the Appellant introduced in her post-hearing briefing attempting to refute the objective MSDE data, VPN data, and security access data the local board relied upon to support the decision to terminate the Appellant. *See*, Appeal, Ex. 8. It was not unreasonable for her supervisors to find Appellant's productivity rate with the reasonable accommodation highly unacceptable and grounds for termination.

The Appellant also argues that the penalty of termination was unreasonable because it was too severe. She argues that she should have been given an opportunity to improve her performance based on her experience and the absence of any previous disciplinary actions against her. The record demonstrates that the failure of the Appellant to perform the duties of her position created a serious situation that had the potential to create significant legal and financial implications for FCPS. The situation required FCPS Human Resources to pull staff from their regularly assigned duties, including those who normally worked on hiring and recruitment of teachers and created a major interruption to the work of FCPS Human Resources during the COVID-19 pandemic.

We find the termination was not arbitrary or unreasonable.

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[5] We do not find that the initial termination letter conflicts with the Superintendent's termination letter as argued by the Appellant. The initial termination letter does not state that Mr. Thornburg did not become aware of the backlog until August 2021, rather it states, "[P]lease recall that during an August 2, 2021 Leadership Team virtual meeting, you voluntarily shared the following information…". (Response, Ex. 12). This language is accurate and does not conflict with the Superintendent's letter which states:

> Mr. Thornburg acknowledged that he had been made aware of Ms. Ianacone's backlog regarding certification tasks in January 2021. This was discussed with Ms. Ianacone's supervisor, Curtis Scott. He added that the extent of Ms. Ianacone's inability to complete tasks was not fully realized until August. Mr. Thornburg said that at that point it became clear that the essential functions of Ms. Ianacone's job were not being met while Ms. Ianacone was on work-from-home status.

(Response, Ex. 1).

[6] The Hearing Examiner stated, "Because Appellant did not appear at the hearing before this Hearing Examiner, there was no opportunity for Counsel for the Superintendent, or, for that matter, this Hearing Examiner, to ask questions of Appellant about the how this information was compiled, or the substantive content of the evidence. Accordingly, this Hearing Examiner reviewed this information with some skepticism, and considers these factors in determining the weight that should be given to this evidence." *See* Response, Ex. 2 at 22.

Due Process

The Appellant also argues that termination decision should be overturned for a lack of pre-termination due process. All that is required under the pre-termination notice standard established in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985), is notice of the intended action and the opportunity to be heard. She argues that Mr. Thornburg's initial termination letter gave her no opportunity to respond to the notice of termination. The letter did in fact state that Mr. Thornburg was available to meet with her to discuss the termination notice but the Appellant declined to do so. Granted the letter only gave her three days to respond but we do not find that this was unreasonable given the fact that the Appellant declined the request to meet with Mr. Thornburg following the August 2, 2021, staff meeting.

The Appellant was provided the opportunity to participate in a full evidentiary hearing before the local board's Hearing Examiner, and that hearing took place on March 23, 2023. Accordingly, we find no due process violation. *See Sandra A. v. Prince George's Cnty. Bd. of Educ.,* MSBE Op. No. 13-60 (2013) (citing cases) (The opportunity for a full evidentiary hearing serves to cure any deficiencies that occurred in prior administrative proceedings).

Unlawful Retaliation

The Appellant argues that the decision to terminate her was illegal and based on retaliatory reasons because of her requests for reasonable accommodations under the ADA and for filing charges of discrimination with the EEOC. The State Board of Education has recognized retaliation as an illegal reason for terminating an employee if it is done in response to an employee engaging in the protected activity. *See Dorsey v. Carroll Cnty. Bd. of Educ*., Op. No. 19-35 (2019), *citing Young v. Prince George's Cnty. Bd. of Educ*., MSBE Op. No. 17-39 (2017). In order to establish a prima facie case of retaliation, an appellant must show that (1) he or she engaged in a protected activity; (2) that the school system took a materially adverse action against him; and (3) that a causal connection existed between the protected activity and the materially adverse action. *Young v. Prince George's Cnty. Bd. of Educ*., MSBE Op. No. 17-39 (2017) (*citing Burling N. & Santa Fe. Ry. Co. v. White,* 584 U.S. 53, 68 (2006)); *see also Thompson v. Potomac Electric Power Co*., 312 F.3d 645, 650 (4 Cir. 2002). The school system may then rebut the prima facie case by showing that there was a legitimate nondiscriminatory reason for the adverse action. The burden then shifts back to the Appellant to show that the reasons given by the school system are pretextual. *Id.*

There is no evidence in the record that Mr. Thornburg, or Ms. Keefer had any knowledge of the EEOC charges until after the termination decision. As to the Appellant's accommodation requests, the Appellant argues that there was a close temporal connection between the events of Appellant making her requests for accommodations, of which the final one was denied on August 3, 2021, and her termination notice that occurred less than one month later on September 17, 2021. The Hearing Examiner concluded that the timeline cited by the Appellant is not sufficient to definitely establish a causal connection between the protected activity, (the requests for accommodations), and the adverse action stating:

> In this instance, FCPS granted seven accommodation extension requests to Appellant between January 2021, and August 2021.

> Appellant made the final request for extension of accommodations in May, 2021, which this Hearing Examiner finds, for reasons previously stated, was indefinite. Appellant's termination occurred in September, 2021….Courts have found that, "A lapse of two months between the protected activity and the adverse action is sufficiently long as to weaken significantly the inference of causation.

Response, Ex. 2 at 30 (*quoting King v. Rumsfeld*, 328 F.3d 145, 151, n. 5 (4th Cir. 2003). We agree with this conclusion.

Even if, arguably, the Appellant is able to establish a temporal connection based on the Appellant's request for FMLA leave in early August 2021 and her termination, the local board has satisfied its burden to demonstrate that the decision to terminate the Appellant was based on legitimate, non-retaliatory and non-discriminatory reasons. The record contains a plethora of documents and witness testimony that evidence the Appellant was granted reasonable accommodations but did not perform the essential functions of her job. This created a gross backlog in her work, duties and responsibilities that created serious risks to FCPS. The Appellant has failed to demonstrate that the reasons provided are pretextual.

CONCLUSION

Based on our review of the comprehensive record developed in this matter, we find that there is no factual or legal basis to conclude that the local board's decision was arbitrary, unreasonable, or illegal.

Signatures on File:

_____
Clarence C. Crawford
President

_____
Susan J. Getty

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Monica Goldson

_____
Nick Greer

_____
Irma E. Johnson

_____
Rachel McCusker

_____
Samir Paul

Absent:
Joshua L. Michael, Vice-President
Shawn D. Bartley
Chuen-Chin Bianca Chang

Joan Mele-McCarthy
Holly Wilcox

March 26, 2024