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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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MICHAEL D. GOODWIN

v.

DOCKET NO. 21-86-021

LEWIS COUNTY BOARD OF EDUCATION

DECISION

The facts in this matter are undisputed. Michael D. Goodwin, the grievant, was employed by the Lewis County Board of Education as a social studies teacher in 1970. In May, 1971, Mr. Goodwin received an "Order to Report for Induction" from the Selective Service System. Mr. Goodwin was scheduled for induction on May 19, 1971. Mr. Goodwin informed his principal, Mr. Sam Marchio, of his induction order at which time Mr. Marchio advised Mr. Goodwin that he must submit his resignation to the board of education. Mr. Goodwin complied with that directive and submitted his resignation to be effective May 11, 1971. Mr. Goodwin subsequently applied for, and received, a temporary postponement of induction which allowed him to complete his duties for the 1970-71 school term. On May 18, 1971 the Lewis County Board of Education accepted Mr. Goodwin's amended resignation to be effective at the end of the school year.

Mr. Goodwin was notified that he would be included in the next induction call although no specific date could be ascertained for that call. In August, 1971, Mr. Goodwin had still not received an induction order but decided against requesting that he be allowed to return to his teaching position due to the uncertainty of his future. By letter dated October 14, 1971, Mr. Goodwin was ordered to report for induction on November 16, 1971. Mr. Goodwin served in the military for a period of twenty-one months and fifteen days, having received an early discharge in order to resume his teaching position with the Lewis County Board of Education at the beginning of the 1973-74 school year.

On October 15, 1984, Mr. Goodwin notified Dr. Gary Smith, Superintendent of Lewis County Schools, that he was not receiving experience credit for his military service and requested that the matter be investigated. Superintendent Smith promptly requested an opinion of State Superintendent of Schools, Dr. Roy Truby, as to whether Mr. Goodwin should receive the experience credit. Superintendent Smith noted the resignation had been tendered as a result of the induction notice and that induction actually occurred after the effective date of the resignation even though it was .."quite clear that induction was in process at the time of his resignation."

Dr. Truby determined that Mr. Goodwin would not be entitled to the experience credit as W. Va. Code, 18A-4-1 (1) allows such credit only if actual induction occurred while the teacher was under contract. Based on the reasoning of this opinion and W. Va. Code, 18A-4-1, the Lewis County Board of Education has denied Mr. Goodwin's request for the experience credit.

In its brief submitted at level four, the Board of Education argues that W. Va. Code, 18A-4-1 clearly states that years of experience includes service in the armed forces only if induction occurs while the teacher is under contract. As Mr. Goodwin was not under contract in November, 1971, the law will not permit the Board to grant the relief requested by the grievant.

The grievant argues that the legislative intent behind W. Va. Code, 18A-4-1 was to insure that those teachers who engaged in military service would not be penalized financially upon their return to the teaching profession and that his situation falls within this intent.

The key factor in this case of which Superintendent Truby was not informed and which the Lewis County Board of Education seems to find of little importance is that Mr. Goodwin submitted his resignation in 1971 as directed by his principal. Mr. Marchio, Mr. Goodwin's principal in 1971 and President of the Lewis County Board of Education which conducted a lower

level hearing for this matter on February 28, 1985, has not disputed the grievant's testimony.

Prior to the grievant receiving his induction notice in May, 1971, the board of education had already renewed his teaching contract for the 1971-1972 school year. Mr. Goodwin had intended to return to his teaching position the following year and upon receipt of his postponement could have returned for the beginning of the 1971-1972 school term.

In May, 1971, Mr. Goodwin was still in his first year of employment and unaware of what procedure to follow. As an administrator, Mr. Marchio should have been aware, or made himself aware, of the proper procedure for this situation. Instead, he negligently directed Mr. Goodwin that it would be necessary for him to resign, when in fact there was no such requirement. The grievant relied upon the directive of Mr. Marchio in good faith and acted upon that reliance by submitting his resignation. There is no question that Mr. Marchio's statements induced Mr. Goodwin's resignation and that without the intervention of his principal, Mr. Goodwin would have fallen within the statutory guidelines and remained under contract until the time of his induction.

Findings of Facts

1. Michael D. Goodwin was first employed by the Lewis County Board of Education in 1970.
2. In May, 1971, Mr. Goodwin received an order from the Selective Service System to report for induction on May 19, 1971.
3. Following the directive of his principal, Mr. Goodwin submitted his resignation to the board of education to be effective May 11, 1971.
4. Mr. Goodwin subsequently received a postponement of induction and completed the 1970-1971 school term.
5. The board of education accepted Mr. Goodwin's resignation effective at the end of the 1970-1971 term.
6. Mr. Goodwin was not ordered to report for induction until November, 1971.
7. Upon discharge, Mr. Goodwin returned to his teaching position at Lewis County High School but has never received experience credit for the time spent in the military.

Conclusion of Law

A board of education is estopped from denying an employee experience credit when that employee would have properly received said credit but for his actions in reliance on incorrect information negligently given by a school administrator.

Accordingly, the grievance is GRANTED and the Lewis County Board of Education is hereby ORDERED to credit Michael D. Goodwin with two years additional experience, and to make all necessary adjustments in salary and other benefits effective from the date of his re-employment in 1973.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lewis County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED: November 12, 1986

Sue Keller

SUE KELLER

Hearing Examiner