WILLARD JEFFERS,

Grievant,

v. **Docket No. 95-26-183**

MASON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Willard Jeffers, Grievant, alleges the Mason County Board of Education's ("MCBOE") interpretation of its regulations dealing with its Personal Leave Bank ("PLB") is erroneous and in conflict with the plain language of those regulations. This grievance was denied at Level II and waived at Levels I and III. Grievant appealed to Level IV, and this case was scheduled for hearing. The parties then agreed to submit this case on the record developed below. This grievance became mature for decision on September 22, 1995, the deadline for filing proposed findings of fact and conclusions of law.

The issue in this case is whether MCBOE properly denied Grievant benefits from its PLB. The material facts of this grievance are not in dispute and are set out below.

Findings of Fact

1. In 1989, pursuant to W. Va. Code §18A-4-10, MCBOE established a PLB for active employees who are absent from work because of accident or illness.

2. Grievant, a 50-year-old, multi-classified maintenance employee, has worked for MCBOE for the past seventeen years.

3. On Wednesday, October 26, 1994, he donated two days of personal leave to the PLB and became an eligible member.

4. On Friday, October 28, 1994, he filled out an accident report at work stating he was injured when he "stepped up in a chair and up on a platform."

5. Grievant worked the following Monday, October 31, 1994, but has not been to work since

that date.

6. He filed a Workers' Compensation claim later that week. Dr. Harold Ayers' report stated Grievant had "lumbar sacaral stress [with] sciatica" and listed the anticipated period of disability as four weeks. Dr. Ayers also noted Grievant suffered from diabetes and hypertension, but did not have any disability prior to this injury.

7. On December 20, 1994, the Workers' Compensation Commissioner denied this claim stating "neither an occupational injury nor an occupational disease occurred." Grievant protested this Order on December 28, 1994, and the current status of Grievant's claim is unclear.

8. Grievant requested thirty days from the PLB on January 7, 1995, and attached the following statement from Dr. Ayers:

The above has low back disease with sciatica including left leg. He has disc disease and will not be able to be employed through March 1995.

9. Prior to the PLB Committee's meeting to consider Grievant's request, Dr. Ayers sent the following letter dated February 6, 1995, to the members:

Mason County Sick Leave Bank
Viand Street
Point Pleasant, WV 25550

RE: Willard Jeffers

To Whom It May Concern:

The above named patient has an injury to back with Lumbar strain and sciatica. He currently is unable to fill his position at work secondary to the injury. He is in the process to see if any treatment is possible to correct his problem.

Thanks for your consideration. I estimate it will be two months at least till able to work if a treatment is found.

10. On February 14, 1995, the PLB Committee met and unanimously voted to deny Grievant's request based on "insufficient evidence to indicate that it falls within the guidelines of the policy." The members did not think Grievant suffered from a "severe medical hardship (catastrophic illness or

serious injury)", thus he did not qualify for benefits. Level II, Admin. Exhs. 9 and 12.

11. Grievant's accrued sick and annual leave ran out on February 2, 1995.

12. On February 21, 1995, Grievant again requested thirty days from the PLB and attached the following statement from Dr. Ayers:

Mason County Sick Leave Bank

Viand Street

Point Pleasant, WV 25550

RE: Willard Jeffers

To Whom It May Concern:

Willard Jeffers has Hypertension, known Coronary Artery Disease and now Insulin Dependent Diabetes Mellitus. With his loss of employment this patient cannot afford test [sic] to monitor his disease or medication to control this. Without his access to medication patients [sic] underlying disease will become life threatening.

13. Grievant followed this application with notes dated March 8, 1995 and March 21, 1995 requesting immediate action by the PLB Committee on his subsequent request.

14. Mr. George Miller, Assistant Superintendent and a member of the PLB Committee, wrote the Grievant on March 23, 1995, stating:

Dear Mr. Jeffers:

At a hearing on your Sick Leave Bank request on Tuesday, February 14, 1995, at the Mason County Board Office, the committee voted at that time to deny your request for sick leave days. The committee felt the diagnosis you presented was not of a catastrophic illness or injury as per policy requirements.

Therefore, as per your request for a hearing, the Mason County Sick Leave Policy (part IV, G) does not provide for an appeal of the committee's decision.

If there should be any additional information or questions, please let us know.

15. The decisions of the PLB Committee are final and there are no provisions for an appeal

process. Level II, Admin. Exh. 12, "Personal Leave Bank Regulations" at IV G.

16. During its tenure the PLB Committee has granted leave to approximately fifteen employees. In each of these decisions the Committee has defined catastrophic illness and serious injury to mean life threatening conditions.

17. On March 13, 1995, Dr. Ayers wrote MCBOE stating Grievant "needs to be off work from November 1, 1994 to June 1, 1995." No diagnosis was cited.

18. Grievant has maintained his PEIA health insurance during this time and has received the appropriate benefits. This insurance has not paid for his back medication, but no rationale for this failure was cited by the parties.

19. Grievant has not applied for any form of permanent disability.

Discussion

W. Va. Code §18A-4-10 ¶5 states "[a] county board of education may establish a personal leave bank" and, if it chooses to do so, "[s]uch personal leave bank shall be established and operated pursuant to rules adopted by the county board." (See footnote 1) The purpose of such banks is to provide income to active employees who have used all their leave time and are still absent from work due to an accident or an injury. Id. When MCBOE established a PLB in1989, it wrote rules and guidelines for membership and eligibility, as well as regulations for its operation.

The Grievance Board has had only one decision dealing with PLB's. In Neal v. Cabell County Bd. of Educ., (See footnote 2) Administrative Law Judge Dunn held that requiring an employee to prove severe medical hardship (catastrophic illness or serious accident) was not inconsistent with the language in W. Va. Code §18A-4-10, had a rational basis, was not arbitrary, and was within the discretion granted to a county board by the Legislature. Id. at 8. W. Va. Code §18A-4-10 does not require sick leave banks to be available to an employee for any accident or illness no matter the severity, as no leave bank could be created to meet that kind of demand. Id.

Neal also held an illness or accident did not have to be life threatening to meet the definition of catastrophic or a severe medical hardship. Catastrophic is defined as: a disaster or a great and sudden calamity. The American Heritage Dictionary at 247. Severe is defined as unsparing, harsh, taxing, and forbidding. Id. at 1123. Thus, an illness or accident may be a calamity, harsh, and taxing without being life-threatening. By the same token an illness or accident would have to be a calamity,

unsparing, and very serious in scope and duration to qualify for leave from the PLB.

In his initial request Grievant asked for thirty days of leave because of a lumbar strain and sciatica. He was aware that the physician's statement must demonstrate need and establish a severemedical hardship. Although Grievant may have been uncomfortable and somewhat incapacitated by his back pain, this diagnosis, for which he requested leave, does not rise to the level of a catastrophic illness. Grievant failed to demonstrate to the Committee he was eligible for leave.

Grievant makes much of the fact that the entire Committee did not meet when he resubmitted his leave request. Only two members discussed the second request prior to the March 23, 1995, letter. MCBOE argues the Committee's regulations states their decisions are final, and there is no appeal process. This is a correct statement. However, there is also no statement within the regulation which prevents an employee from making another request with additional documentation and having this request considered. Given that rules and regulations are to be strictly construed in favor of employees, it is appropriate to hold the PLB Committee should have considered Grievant's second request. Morgan v. Pizzino, 256 S.E.2d 592 (W. Va. 1979).

Since Grievant's requested relief at Level IV was for sick leave benefits, the undersigned will consider Grievant's second request to provide the speedy resolution he requested.

According to Dr. Ayers' letter and Grievant's testimony, Grievant suffers from hypertension (high blood pressure) caused by coronary artery disease and insulin-dependent diabetes. These are the same diseases Grievant had at the time the Workers' Compensation claim was filed, and his doctor did not consider them disabling. Unfortunately, many people in our society suffer fromthese same diseases, and although potentially serious and requiring treatment, they are not catastrophic or identified as a severe medical hardship. Therefore, Grievant is not eligible for leave from MCBOE's PLB.

The above-discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. MCBOE's limitation that eligibility for sick leave benefits be restricted to members with severe medical hardship is consistent with the language of W. Va. Code §18A-4-10. Further, this language is rational, not arbitrary, and within the discretion granted by the Legislature. Neal v. Cabell County Bd. of Educ., Docket No. 94-06-238 (Dec. 22, 1994).

2. PLB's interpretation that a member must suffer from a life-threatening illness before he is eligible to receive benefits is clearly erroneous and conflicts with the written language of the policy. Neal, supra.

3. Since regulations shall be strictly construed in favor of employees, and the PLB Policy of MCBOE did not prevent it, the PLB Committee should have considered Grievant's resubmitted request for benefits, as it contained additional medical evidence. Morgan v. Pizzino, 256 S.E.2d 592 (W. Va. 1979).

4. Grievant failed to demonstrate he met the stated guidelines for eligibility for sick leave benefits from MCBOE's PLB.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: October 31, 1995

Footnote: 1Grievant argues the Legislature intended the PLB to be a portion of an employee's benefit package provided to him/her by the county board. As W. Va. Code §18A-4-10 states a county board "may" establish such a bank, this argument is considered to be without merit. See Hartman v. Bd. of Educ. County of Mineral, 460 S.E.2d 785 (W. Va. 1995).

Footnote: 2Docket No. 94-06-23 (Dec. 22, 1994).