

IN THE MATTER OF
CHESTER MORANIEC - APPELLANT
609 KINGSTON ROAD
MIDDLE RIVER, MD 21220

RE: Appeal of Decision Denying Disability
Retirement benefits

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-11-023

* * * * *

OPINION

This case is an appeal from the decision dated April 14, 2011 from the Board of Trustees of the Employees' Retirement System (herein referred to as the "ERS") denying Mr. Moraniec's application for service retirement benefits on the basis that Mr. Moraniec did not provide "honorable and faithful service" as required by *Baltimore County Code*, §§5-1-201-213 while employed for Baltimore County. Mr. Moraniec appealed the ERS decision to this Board. A hearing was held on June 23, 2011. Mr. Moraniec was represented by Howard E. Goldman, Esquire and the Employees' Retirement System was represented by Suzanne Berger, Assistant County Attorney.

FACTS

Mr. Moraniec began his employment on July 10, 2004, as a Laborer II with the Bureau of Solid Waste Management at the Eastern Sanitary Landfill ("ESL"). Part of his job duties entailed driving inmates from the jail to the ESL and then supervising the inmates while they worked there. He was also responsible for driving County vehicles. His duties are more specifically outlined in the job description of Laborer II. (County Exh. 6).

Mr. Moraniec, a former machinist mate, 3rd class, in the United States Navy, who was honorably discharged on June 9, 1965 - testified that, prior to being employed with Baltimore County, he worked in various jobs driving gas trucks as well as hazardous waste trucks.

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At the hearing, evidence was produced by the County which revealed that, during his employment with Baltimore County, Mr. Moraniec was reprimanded for a number of infractions including unexcused latenesses, extended absences from work (he used 107.6 days of sick leave during his 6 years of employment) and taking longer breaks during the work day than was permitted. However, among the more notable violations were:

1) On March 31, 2006, Mr. Moraniec drove an inmate to a store in a County dump truck to pick up lunches and supplies. While in the store, he left the inmate unattended in the truck. Upon exiting the store parking lot, he backed the truck into a parked car, damaging that vehicle.

2) On August 26, 2009, he was reprimanded for leaving inmates unattended at the ESL thereby allowing them to scavenge property in violation of County policies.

3) On September 8 and 10, 2009, he was caught driving a County vehicle, without permission outside the ESL, while taking an unauthorized break from work.

4) On October 2, 2009, he left a County water truck unattended at the ESL and his supervisor was unable to locate him. Later the same morning, he was caught returning to the ESL in a County vehicle that he was prohibited from driving. He was suspended for 1 day, without pay.

5) On April 16, 2010, he was observed stealing batteries from the ESL and loading them into a County vehicle. He was also observed unloading the batteries from the County vehicle and putting them into the corner of a roadway. He then covered the batteries with a trash bag in order to pick them up on the way home. The County suspended him for 10 days, without pay, for this action.

Mr. Moraniec received verbal and written reprimands as to each of the above instances. He also received written and verbal reprimands for being late and for unexcused absences. The reprimands were placed in his employee file. (County Exhs. 2 and 3). Some of the written

reprimands provided notice that Mr. Moraniec could be terminated if he did not follow the rules and regulations for supervising inmates at the ESL. (County Exh. 5).

Notwithstanding each of the above instances, the final offence that the County found warranted a termination of Mr. Moraniec's employment occurred on February 15, 2011. On that date, his supervisors observed Mr. Moraniec, while he was working at ESL, distributing packages of cigarettes to inmates out of the trunk of his car. Mr. Moraniec was also observed accepting money from the inmates in exchange for the cigarettes. The inmates proceeded to open the packages and to smoke the cigarettes. Upon further investigation, the County found the empty cigarette packs with Virginia tax stamps in the trash. There were no Maryland tax stamps on the cigarettes. Mr. Moraniec received a 10 day suspension without pay for this offense. (County Exh. 3).

Upon further investigation, the County discovered that a year earlier, in March of 2009, criminal charges were brought against Mr. Moraniec in the Circuit Court for Prince George's County, Case No.: CT090390X. The charges were for: (1) willful transportation of unstamped cigarettes; and (2) for possession of unstamped cigarettes. On February 27, 2009, an ESL supervisor, James D. Dawson, had written a letter to the Court on Mr. Moraniec's behalf wherein Mr. Dawson praised Mr. Moraniec for the "fine job" that he had been doing for the County. (Appellant's Exh. 3). On July 1, 2009, the Court found him guilty of the "possession" count and placed on 3 years supervised probation.

On February 16, 2011, the day after he was observed selling cigarettes, the County terminated Mr. Moraniec's employment.

At the hearing, Mr. Moraniec acknowledged some of the offenses and disputed others. He admitted to the March 25, 2006 incident where he left an inmate unattended in a County truck and then backing the truck into a parked car. He further acknowledged that he was in error for

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permitting the inmates to scavenge the ESL on March 30, 2009. He refused to sign the written reprimand for driving an unauthorized County truck on September 8 and 10, 2009. At the hearing before this Board, Mr. Moraniec claimed that the facts of that offence were not true.

Mr. Moraniec further admitted that he had stolen 2 batteries on April 16, 2010 in order to trade them in for new ones. But Mr. Moraniec justified this action by stating that the stolen batteries had only salvage value. He admitted that he knew that he was violating a County policy when he did so.

With regard to selling cigarettes to inmates, he acknowledged the County regulation against selling the inmates cigarettes. He defended that he sold the cigarettes at cost to the inmates and therefore was not making money from the sale. He also mentioned that the inmates had a history of smoking at the ESL before he sold them cigarettes. He testified that he and his wife travel to Virginia to buy the cigarettes. He knew that he was violating County policy by doing so but saw "no harm" in the action.

Mr. Moraniec explained that his absences from work were due to having had 3 surgeries for vascular disease. Mr. Moraniec believes that the County was looking for a reason to fire him due to his extended absences. He had previously put in a request to transfer out of ESL on November 25, 2009. (Appellant's Exh. 2).

ISSUES

1. WHETHER THE BOARD OF TRUSTEES ERRED IN FINDING THAT MORANIEC'S SERVICE WITH BALTIMORE COUNTY WAS NOT HONORABLE AND FAITHFUL AND THEREFORE, NOT CREDITABLE TOWARDS RETIREMENT?

2. WHETHER THE BOARD OF TRUSTEES OR THE BOARD OF APPEALS ON REVIEW, HAS DISCRETION TO IMPOSE A MODIFIED SANCTION RATHER THAN A TOTAL DENIAL OF APPELLANT'S BENEFITS?

Mr. Moraniec's Position

Mr. Moraniec, contends that selling cigarettes to inmates at cost may have been in violation of County rules and regulations but it does not rise to the same level of behavior as that found in *ERS v. Brown*, 186 Md. App. 2936 (2009). In *Brown*, the Court of Special Appeals affirmed this Board's finding that Police Officer Brown's conviction for possession of cocaine did not constitute "honorable and faithful service" under BCC, § 5-1-223. Mr. Moraniec argues that the selling cigarettes at cost to inmates was "an act of humanitarian kindness." (See Appellant's Memorandum, p.1). He classifies all of his offences as "minor infractions." *Id.*

Mr. Moraniec points out that there are no definitions or standards by which to determine what behavior constitutes "honorable and faithful service." As a result, the decision of the ERS is arbitrary and capricious. He argues that imposing a lesser sanction such as - delaying the availability of such benefits for a period of time - is more appropriate than denying all benefits due to the minor nature of the offences.

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 cited 3 cases where the Courts have upheld the requirement that service must be honorable and faithful. In each of these cases, criminal conduct was involved. *Baltimore County Board of Trustees of the Employees Retirement System v. Comes*, 247 Md. 182 (1967). *Bucher v. Ober*, 204 Md. 568 (1954); and *Kone v. Baltimore County*, 231 Md. 466 (1963).

The County's position here is that, given the history of reprimands and infractions by Mr. Moraniec which culminated in a criminal conviction for selling cigarettes to inmates while working at the ESL he has not demonstrated honorable or faithful service. The County added further that there is no provision in the BCC Code which authorizes either the Board of Trustees, or this Board on review, to modify the penalty such as delaying the start of the benefits.

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 *Combs* Court went further:

The cases in this state, though not directly in point, recognize the principle that employees who are dismissed or discharged for criminal activities or malfeasance are not entitled to a pension.

Id. at 187. Thus, under *Combs*, there is no authority by which this Board may impose a lesser or modified sanction. The Employee is simply not entitled to the pension. *Id.*

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

The Court of Special Appeals in *Brown* rejected Mr. Moraniec’s argument that because the BCC does not expressly set forth a definition of “honorable and faithful” service, the ERS decision is arbitrary and capricious. In fact, this Board based its first decision in *Brown* on that

very argument and held that the ERS decision to deny Brown benefits was arbitrary and capricious because there was no standard.

The Court of Special Appeals, however, reversed that Board decision and remanded the case to use to consider Officer Brown's actions behavior outside of work. More importantly, the Court of Special Appeals held that this Board's decision as to whether behavior has been "honorable and faithful" is a "judgment call" of this Board, as a fact finder, although the decision must be supported by substantial evidence. *Brown, supra* at 313.

Reviewing the evidence presented here, Mr. Moraniec knowingly, consistently and repeatedly violated Baltimore County Bureau of Corrections Rules and Regulations for supervising inmates at the ESL. Even putting aside Mr. Moraniec's excessive absences, his unexcused lateness, and taking unauthorized and unexplained breaks during work hours, he became the vehicle by which inmates were left unattended both inside and outside the ESL. He allowed inmates to steal County property such as batteries from the ESL and then gave cigarettes as an "act of humanitarian kindness." He not only broke rules but he put the safety of Baltimore County citizens at risk when he failed to monitor the inmates as required. Despite being given numerous chances to prove himself and to save his retirement, he made conscious decisions to ignore the rules.

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 this case, there was criminal conduct by Mr. Moraniec. The evidence was undisputed as to Mr. Moraniec's conviction for possession of unstamped cigarettes which cigarettes he ultimately sold to the inmates. Further, it should not be ignored that Mr.

Moraniec was still on a 3 year probation with the Circuit Court for Prince George's County when his supervisors observed him selling the unstamped cigarettes from his car on February 15, 2011.

In addition, the evidence showed that the County provided Mr. Moraniec with notice in the written reprimands that he could be terminated for his behavior. The October 2, 2009 Suspension Notice for his unauthorized use of a County Vehicle also contained a notice that his retirement benefits could be terminated. Nevertheless, the 1 day suspension without pay for the October 2, 2009 incident had no effect on him as he was caught only 6 months later stealing batteries. Then, the 10 day suspension without pay for the battery offense was not effective because less than 1 year later, he was caught selling the cigarettes.

In the Board's view, the County was more than generous with him, providing him with numerous second chances along with notice of what he was risking by making poor decisions. Rather than correct his behavior, his behavior worsened. Yet, his justification for his actions was simply that he did not make money from the cigarette sale or that the batteries that he stole were not worth more than salvage value. As in *Brown, supra*, his decisions to break the rules was not an aberration but a pattern of behavior wherein he made conscious choices for which he must accept responsibility.

While Mr. Moraniec may have honorably served his country, he did not honorably serve his County. Accordingly, this Board will uphold the denial of Mr. Moraniec's application for retirement benefits.

ORDER

IT IS THEREFORE THIS 5th day of October, 2011, by the Board of Appeals of Baltimore County

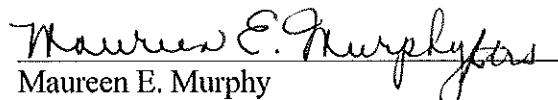
ORDERED that the decision of the Board of Trustees of the Employees' Retirement System of Baltimore County order of April 14, 2011 in which Mr. Moraniec's application for service retirement benefits was denied based on the determination that his service as an employee of Baltimore County was not honorable and faithful and therefore not creditable toward a retirement allowance is **SUSTAINED**; and it is further

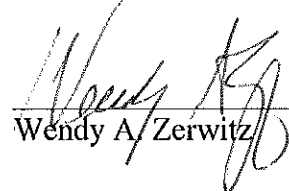
ORDERED that for the reasons stated in the foregoing Opinion, Mr. Moraniec's request for service retirement benefits be and the same is hereby **DENIED**.

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, Panel Chairman


Maureen E. Murphy


Wendy A. Zerwitz