



IN THE OFFICE OF STATE ADMINSTARTIVE HEARINGS
STATE OF GEORGIA

DEBORAH G. WILLIAMS,)	
Petitioner,)	
)	
v.)	DOCKET NO.:
)	OSAH-SPB-DIS-1125875-60-Gatto
DEKALB COUNTY BOARD OF)	
HEALTH,)	
Respondent.)	
_____)	

MEMORANDUM OPINION AND ORDER¹

COUNSEL: Stephanie D. Banks, for Petitioner.

Randy C. Gepp, for Respondent.

JUDGE: Gatto, J.

I. INTRODUCTION

The above-styled action was filed by Deborah G. Williams pursuant to Georgia’s Merit System Act appealing the decision of the DeKalb County Board of Health to dismiss her from employment. Pending before the Court is Williams’s motion for summary judgment, which argues that she is entitled to judgment as a matter of law. Specifically, Williams argues in her motion that she was employed in the classified service and was wrongfully terminated by the Board of Health since she was not dismissed in accordance with Georgia’s civil service law. In response to Williams’s motion, the Board argues that Williams was an unclassified employee and was not covered under Georgia’s civil service law. For the reasons indicated below, Williams’s motion for summary judgment is **GRANTED**.

¹ This Memorandum Opinion and Order is an initial decision. *See* O.C.G.A. § 45-20-9(e)(1) (in the absence of an application for review from an adversely affected party to the state personnel board within 30 days from the date the initial decision was issued or in the absence of an order by the board within such time for review on its own motion, the decision shall become the decision of the board).

II. UNDISPUTED FINDINGS OF MATERIAL FACT

Williams was previously demoted by the DeKalb County Board of Health from her position as a Clinical Nursing Coordinator to the position of Public Health Nurse, effective February 1, 2010, which was appealed to and affirmed by this Court on June 23, 2010. Resp't's Statement Facts Supp. Mot. Recons. and Dismissal and in Opp'n Pl.'s Mot. Summ. J. (hereinafter "Resp't's Statement Facts") ¶¶ 13, 14; Hill Aff. ¶ 9. After the date of the demotion, Williams worked as a Public Health Nurse and continued in that position until the time of her termination. Resp't's Statement Facts ¶ 15; Hill Aff. ¶10. The employee who previously held that position had unclassified status. Resp't's Statement Facts ¶ 17; (Hill Aff. ¶ 10). Williams was subsequently terminated from her position as a Public Health Nurse, effective March 21, 2011. Resp't's Statement Facts ¶ 1; Hill Aff. ¶3. The termination letter provided no reason for the dismissal and informed Williams that she did not have a right to appeal the termination. Pet'r's Mot. Summ. J., Ex. A.

III. STANDARD OF LAW

A summary judgment motion before the Court is properly granted where the moving party demonstrates that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. *Prince v. Esposito*, 278 Ga. App. 310 (1) (2006). A party may prevail on its motion for summary judgment

by showing the court that the documents, affidavits, depositions and other evidence in the record reveal there is no evidence sufficient to create a jury issue on at least one essential element of plaintiff's case. If there is no evidence sufficient to create a genuine issue as to any essential element of plaintiff's claim, that claim tumbles like a house of cards. All of the other disputes of fact are rendered immaterial. [Cit.] A defendant who will not bear the burden of proof at trial need not affirmatively disprove the nonmoving party's case; instead, the burden on the moving party may be discharged by pointing out by reference to the

affidavits, depositions and other documents in the record that there is an absence of evidence to support the nonmoving party's case. If the moving party discharges this burden, the nonmoving party cannot rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue.

Collins v. Byrd, 204 Ga. App. 893, 894 (1992).

In response to Williams's summary judgment motion, the Board of Health argues that her motion "is deficient because she has not submitted any admissible evidence in support of the allegations contained in her Motion" and that "[n]one of the sixteen allegations contained in her Statement of Facts is supported by affidavit or citation to the record." The Court does not agree. Giving the Board the benefit of all reasonable doubt, and construing the evidence and all inferences and conclusions therefrom most favorably toward the Board, *Lee v. Southern Telecom Co.*, 303 Ga. App. 642 (2010), the Court nonetheless concludes that the other evidence in the record demonstrates that no genuine issues of material fact remain, and that it affirmatively appears from the pleadings and evidence that Williams is entitled to prevail as a matter of law.

IV. ANALYSIS

"No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed." Ga. Const. Art. I, § I, Para. X. The Merit System Act creates a constitutionally protected contract between the merit system members and the state. *Clark & Stephenson v. State Personnel Bd.*, 252 Ga. 548, 550 (1984). Since the Act "amounts to a contract between the members and the state, it logically follows that as parties to the contract, merit system members are entitled to such rights as the Merit System Act affords them *at the time they assume a classified position.*" (Emphasis added.) *Id.*

The State Personnel Board is authorized to adopt, with the approval of the Governor, rules and regulations to effectuate the state merit system, which “shall have the force and effect of law and shall be binding upon the state departments covered by this article and shall include provisions for . . . demotions” O.C.G.A. § 45-20-4(b)(3). Williams was a public employee governed by the Act and the State Personnel Board’s Rules at the time of her demotion and had a property interest in her job entitling her to the protections of due process. *Brown v. Georgia Dep’t of Revenue*, 881 F.2d 1018 (11th Cir. 1989).

The State Personnel Board’s rules acknowledge this property interest and the rights the Act affords a classified employee by mandating that a classified employee who is demoted “*shall retain the same status in the lower position as in the higher.*” (Emphasis added.) Ga. Comp. R. & Regs. r. 478-1-.10(301). There is no dispute that Williams was in the classified service prior to being demoted to the position of Public Health Nurse on February 1, 2010. Thus, the Court concludes that after her demotion, Williams retained her employment status in the classified service, as required by Ga. Comp. R. & Regs. r. 478-1-.10(301), and the Board of Health had no authority to set or amend the terms and conditions of her employment established by the state merit system. 1973 Op. Att’y Gen. No. 73-56.

As a covered employee in the classified service governed by the Georgia Merit System Act and the State Personnel Board’s Rules, Williams may be terminated only after an evidentiary hearing. *Ray v. Edwards*, 557 F. Supp. 664 (N.D. Ga. 1982), *modified on other grounds*, 725 F.2d 655 (11th Cir. 1984). Therefore, since Williams was vested with the protections of due process at the time of her demotion, the Board of Health was required to, but failed to provide her, with the reasons for her termination and an opportunity to file an appeal and request a

hearing. O.C.G.A. § 45-20-8(b). Thus, the Court concludes that Williams is entitled to summary judgment as a matter of law. Accordingly,

V. ORDER

IT IS HEREBY ORDERED THAT Williams's motion for summary judgment is **GRANTED**, the Board's decision to dismiss her from employment is **REVERSED**, and the Board is directed to reinstate Williams in the classified service.

SO ORDERED THIS 15th day of June, 2011.



JOHN B. GATTO, Judge