

**IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA**

HEATH C. BULLARD	:	
Appellant	:	
	:	
v.	:	
	:	TTA No. 07-15
	:	
BETHLEHEM AREA VOCATIONAL TECHNICAL SCHOOL	:	
Appellee	:	

OPINION AND ORDER

Heath C. Bullard (Mr. Bullard) appeals to the Secretary of Education from the decision of the Joint Operating Committee of the Bethlehem Area Vocational-Technical School (Operating Committee) dismissing him from employment with the Bethlehem Area Vocational-Technical School (AVTS).

FINDINGS OF FACT

1. Prior to his dismissal from employment, Mr. Bullard had been employed by the AVTS for approximately eighteen (18) years. (N.T. p. 10).¹
2. During the 2012-2013 school year, Mr. Bullard held the position of Dean of Students at the AVTS. (N.T. p. 10).
3. Prior to holding the position of Dean of Students, Mr. Bullard was the masonry instruction for fifteen (15) years at the AVTS. (N.T. p.15).
4. At Mr. Bullard’s request, the Operating Committee approved a sabbatical leave for Mr. Bullard from February 6, 2013 to February 5, 2014, for restoration of health. (N.T. pp. 11-12; Exh.² 5, pp. 2 & 4).

¹ N.T. refers to Notes of Testimony during the hearing held before the Operating Committee held on October 12, 2015.

5. Mr. Bullard's doctor sent the AVTS a letter dated December 30, 2013, stating that Mr. Bullard could return to work on February 6, 2014. Mr. Bullard returned to his position as Dean of Students, and continued working to the end of the school year in June 2014. (N.T. pp. 11-12; Exh. 5, pp. 6-7).

6. At the end of the 2013-2014 school year, Mr. Bullard again requested a leave of absence for continued medical concerns. On September 2, 2014, the Operating Committee granted Mr. Bullard uncompensated leave for one (1) year from the date of exhaustion of all paid benefits; thus, the leave was until September 8, 2015. (N.T. pp. 12-13; Exh. 5, pp. 8 & 10).

7. Pursuant to AVTS Policy # 439, the Operating Committee can "specify the conditions under which uncompensated leave may be taken." (Exh. 5, p. 9).

8. By letter dated October 1, 2014, the Pennsylvania School Employees' Retirement System (PSERS) notified the AVTS that Mr. Bullard was approved to receive disability benefits for one (1) year. (N.T. p. 13; Exh. p. 17).

9. In a letter to Mr. Bullard dated April 21, 2015, Brian Williams (Mr. Williams), Executive Director of the AVTS, stated his understanding that Mr. Bullard would return to work for the 2015-2016 school year, and offered him the position of masonry instructor. (N.T. p. 14; Exh. 5, p. 18).

10. Mr. Williams decided to assign Mr. Bullard to the masonry instructor position because the masonry instructor was to retire at the end of the 2014-2015 school year, Mr. Bullard held a masonry certification, had taught masonry for almost 15 years, and was qualified for the job. Additionally, Mr. Williams did not know the future status of the Dean of Students position because of a potential reorganization. (N.T. pp. 14-15).

² Exh. refers to Exhibits admitted into evidence during the hearing held before the Operating Committee held on October 12, 2015.

11. Policy #409 of the AVTS gives the Executive Director the authority to assign and transfer employees if he believes it is for good cause, in the school's best interest, and in accordance with the instructional needs of the school. (N.T. pp. 15-16; Exh. 5, pp. 19-20).

12. In a May 12, 2015 email from Mr. Bullard to Mr. Williams, Mr. Bullard stated that he expected the Dean of Student position to be open for his return to work, which would depend on his doctor's release, which he had not yet been granted. (N.T. pp. 16-17; Exh. 5 p. 23).

13. By letter dated May 19, 2015, Mr. Williams again informed Mr. Bullard that he was being offered the position of masonry instructor. Mr. Williams asked that Mr. Bullard inform him by August 1, 2015, of his intent to return to the AVTS, and to accept or deny the offer. Mr. Williams further explained that the AVTS was reorganizing some positions, including the Dean of Students position. (Exh. 5, p. 26).

14. Lisa Blank, Business Administrator for the AVTS, sent Mr. Bullard a letter dated July 15, 2015. In this letter, Ms. Blank explained to Mr. Bullard that his uncompensated leave was only for one (1) year, and that if he was unable to return to work on September 9, 2015, his leave would terminate and he would no longer be an employee of the AVTS. (Exh. 5, p. 27)

15. In an email sent to Mr. Williams on July 30, 2015, Mr. Bullard advised he would be returning to the AVTS and that "[w]hat position depends on the legal system." (Exh. 5, p. 28). Mr. Bullard again emailed on July 31, 2015, confirming he would be returning and that the position offered would be litigated. (Exh. 5, p. 29).

16. By letter dated August 5, 2015, Mr. Williams:

a. Acknowledged Mr. Bullard's plan to return to work for the 2015-2016 school year;

b. Advised that Mr. Bullard was being assigned to teach the Masonry Program;

c. Explained that the Dean of Students position might be considered for curtailment or other changes, and therefore, the AVTS was not placing an employee in that position on a permanent basis;

d. Advised that the Dean of Students position would be posted as a long-term substitute position, and that internal candidates could apply; and,

e. Reminded Mr. Bullard that prior to his anticipated return on September 9, 2015, he needed to provide the AVTS with a medical release to return to work.

(N.T. pp. 18-19; Exh. 5, p. 30).

17. All bargaining unit members, including Mr. Bullard, were notified of the long-term substitute position of Dean of Students and their opportunity to apply. Mr. Bullard did not apply for the position. (N.T. p. 18).

18. On September 9, 2015, Mr. Bullard left a voice mail message for Mr. Williams stating that he was sick, and did not report for work. (N.T. p.19).

19. In a letter dated September 9, 2015, Mr. Williams reminded Mr. Bullard that he was required to submit a medical release evidencing his fitness for duty prior to returning to work, and without such release, he was not entitled to receipt of employment benefits, including paid sick leave. Although he had not received the letter prior to September 9, 2015, Mr. Williams further acknowledged receipt of a letter from Dr. Krisch dated August 31, 2015. He stated, however, that it was not clear from the letter whether Mr. Bullard was requesting an accommodation based on disability. Mr. Bullard was advised that if he was requesting an accommodation he needed to contact the AVTS to arrange for an independent medical evaluation by a physician selected by the AVTS. (N.T. pp. 19-20; Exh. 5, p. 36).

20. On September 10, 2015, Mr. Bullard emailed Mr. Williams that he was seeking an accommodation based on his disability. (N.T. p. 20; Exh. 5, p. 36). However, Mr. Bullard

did not provide medical information or contact the AVTS to arrange for an independent medical evaluation. (N.T. p. 21).

21. When Mr. Bullard failed to provide a medical release and failed to return to work, Mr. Williams sent him a letter dated September 11, 2015, advising that the AVTS believed Mr. Bullard had willfully neglected his employment duties, and that a *Loudermill*³ hearing was being scheduled to discuss the matter. Mr. Bullard was required to notify Mr. Williams by September 17, 2015, if he wished to attend the *Loudermill* hearing, and if he did not respond by that deadline, the AVTS would issue a Statement of Charges and Notice of Hearing to dismiss him from employment with the AVTS. (N.T. pp. 20-21; Exh. 5, pp. 39-40).

22. On September 16, 2015, Mr. Bullard emailed Mr. Williams that he would love to defend himself but the meeting would have to occur in December. (N.T. p. 21; Exh. 5, p. 41).

23. On September 16, 2015, Mr. Williams also received a letter from PSERS that Mr. Bullard was again approved to receive disability benefits for one (1) year. (N.T. pp. 21-22; Exh. 5, p. 42).

24. By letter dated September 21, 2015, the AVTS issued a Statement of Charges and Notice of Hearing to Mr. Bullard advising that the Operating Committee would convene on October 5, 2015, to determine whether Mr. Bullard should be dismissed from employment for willful neglect of employment duties. Mr. Bullard was advised of his rights, including his right to a hearing, or to voluntarily resign from employment with the AVTS. (N.T. p. 22; Exh. 5, pp. 43-44).

25. Mr. Bullard requested that the October 5, 2015 Operating Committee hearing be postponed in order for him to obtain counsel. The AVTS agreed to the postponement, and rescheduled the hearing for October 12, 2015. (Exh. 1).

³ *Cleveland Board of Education v. Loudermill*, 105 S.Ct. 1487 (1985).

26. On October 9, 2015, Mr. Bullard requested another postponement of the Operating Committee hearing. The AVTS did not agree to another postponement, and advised Mr. Bullard that he should make his request for another continuance with the hearing officer. (Exh. 3).

27. At 7:51 p.m. on October 11, 2015, Mr. Bullard emailed Mr. Williams stating that he was resigning from the position of masonry instructor due to ongoing medical problems. Mr. Williams responded at 9:23 a.m. on October 12, 2015, advising Mr. Bullard that the administration would recommend at the Operating Committee's November 4, 2015 meeting that it accept his resignation. Mr. Williams further advised that the administration would present its case at the hearing scheduled for 10:00 a.m. because notwithstanding Mr. Bullard's assertion that he was entitled to return to the Dean of Students position, he had been reassigned and had not provided the required medical clearance to return to any position. (Exh. 4).

28. Mr. Bullard did not contact the hearing officer to request a continuance, and he did not attend the October 12, 2015 hearing before the Operating Committee where the AVTS administration presented testimony to support its charge that Mr. Bullard had willfully neglected his duties. (N.T. pp. 5, 9).

29. On November 4, 2015, the Operating Committee voted to dismiss Mr. Bullard from his employment with the AVTS, and issued an adjudication supporting dismissal.

30. On December 3, 2015, the Secretary of Education received a letter from Mr. Bullard stating that he considered himself aggrieved by action of the Operating Committee and others at the AVTS, and requested an appeal.

31. The Secretary appointed a hearing officer, and a hearing was held on January 28, 2016.

DISCUSSION

Mr. Bullard's dismissal by the Operating Committee was pursuant to Section 1122 of the Public School Code, *as amended*, 24 P.S. §11-1122, which provides in pertinent part:

[the] only valid causes for termination of a contract heretofore or hereafter entered into with a professional employee shall be immorality; incompetency; . . . intemperance; cruelty; persistent negligence in the performance of duties; willful neglect of duties; . . . persistent and willful violation of or failure to comply with school laws of this Commonwealth (including official directives and established policy of the board of directors); on the part of the professional employe . . .

A tenured professional employee such as Mr. Bullard may only be dismissed for the reasons set forth in Section 1122 of the Public School Code. *Foderaro v. School District of Philadelphia*, 531 A.2d 570, 571 (Pa. Cmwlth. 1987), *appeal denied*, 542 A.2d 1372 (Pa. 1988). "It is thus apparent that the legislature intended to protect tenure except for the serious charges listed." *Lauer v. Millville Area School District*, 657 A.2d 119, 121 (Pa. Cmwlth 1995), *appeal denied* 675 A.2d 1253 (Pa. 1996). In order to uphold Mr. Bullard's dismissal only one of these charges must be established. *Horton v. Jefferson County-DuBois Area Vocational Technical School*, 630 A.2d 481, 483 (Pa. Cmwlth. 1993).

After hearing, and a thorough review of the record, I find that there is sufficient evidence to affirm the Operating Committee's termination of Mr. Bullard from employment with the AVTS.

Willful Neglect of Duties

Willful neglect of duties was added to Section 1122 in 1996 as one of the grounds by which a professional employee can be dismissed. Commonwealth Court has defined willful neglect of duties by a professional employee as "an intentional disregard of duties by that employee." *Flickinger v. Lebanon School District*, 898 A.2d 62, 67 (Pa. Cmwlth. 2006). In this charge, there is no requirement of a continuous course of conduct. *Id.*

In its Statement of Charges and Notice of Hearing issued September 21, 2015, the Operating Committee advised Mr. Bullard that the AVTS administration had charged him with willful neglect of duties for his “refusal to comply with administrative request and directives for documentation necessary to return to work.” The directives with which Mr. Bullard allegedly failed to comply were repeated requests that he submit a medical release evidencing his fitness to return to work. Based on the evidence presented, the Operating Committee voted to terminate Mr. Bullard’s employment with the AVTS.

Mr. Bullard argues that he provided the AVTS with a medical clearance, and also resigned as masonry instructor. Therefore, the request for relief stated in Mr. Bullard’s appeal is that his “job be returned to full position or through further discussion the possibility of my resignation to count rather than a termination of employment.” *See Mr. Bullard’s Appeal.*

Mr. Bullard had been the masonry instructor at the AVTS for 15 years, and then in the 2012-2013 school year held the position of Dean of Students. At Mr. Bullard’s request, and with the approval of the Operating Committee, Mr. Bullard was placed on sabbatical leave for restoration of health from February 6, 2013 to February 5, 2014. In December 2013, Mr. Bullard’s doctor, Dr. Krisch, provided written notice to the AVTS specifically stating that Mr. Bullard could return to work, on February 6, 2014, and Mr. Bullard did so. However, at the end of the 2014-2015 school year, Mr. Bullard again requested a leave of absence for continued medical concerns. On September 2, 2014, the Operating Committee granted Mr. Bullard uncompensated leave for one (1) year from the date of exhaustion of all paid benefits; thus, the leave was until September 8, 2015.

Believing that Mr. Bullard would return to work for the 2015-2016 school year, Mr. Williams advised Mr. Bullard in April 2015, that he was being offered the position of masonry

instructor. On several more occasions in May and August, Mr. Williams advised Mr. Bullard that he was being assigned to the position of masonry instructor, and further explained that the Dean of Students position might be curtailed because of a possible reorganization. Therefore, until administrative decisions had been made about the reorganization, the position of Dean of Students would be posted as a long-term substitute position for the 2015-2016 school year for which AVTS staff, including Mr. Bullard, could apply. Mr. Williams reminded Mr. Bullard that in order to return to work he needed to provide a medical release prior to his anticipated return on September 9, 2015. In July 2015, Ms. Blank, the business administrator, also notified Mr. Bullard that if he could not return to work on September 9, 2015, his leave would terminate and he would no longer be an AVTS employee.

On various occasions between May and July 2015, Mr. Bullard responded to Mr. Williams and stated that he would return to work. Initially, Mr. Bullard stated that he expected the Dean of Students position would be open for his return to work, but subsequently stated that the position offered to him would be litigated.

However, on September 9, 2015, Mr. Bullard did not return to work, and left a voice mail message for Mr. Williams stating that he was sick. In a letter dated September 9, 2015, Mr. Williams reminded Mr. Bullard he had been informed on multiple occasions that he needed to submit a medical release evidencing his fitness for duty before his return to work, and without such medical release he was not entitled to the use of sick leave. Mr. Williams also acknowledged receipt of a letter from Mr. Bullard's doctor, Dr. Krisch, which was dated August 31, 2015, but not provided to Mr. Williams until September 9, 2015. Mr. Williams stated that it was not clear from Dr. Krisch's letter whether Mr. Bullard was seeking an accommodation based upon disability, but if he was seeking such accommodation, Mr. Bullard had to contact the

ATVS by September 10, 2015, to arrange for an independent medical evaluation. Although Mr. Bullard emailed Mr. Williams on September 10 that he was seeking an accommodation based on disability, he did not contact the AVTS to arrange for an independent medical evaluation.

After Mr. Bullard failed to provide a medical release to return to work, and failed to contact the ATVS to arrange for an independent medical evaluation, Mr. Williams sent Mr. Bullard a letter on September 11, 2015, advising that the ATVS would schedule a *Loudermill* hearing to discuss the matter. Mr. Bullard was required to advise the AVTS by September 17, 2015, whether he wanted to attend the hearing. Although Mr. Bullard emailed Mr. Williams on September 16, 2015, stating that he wanted to defend himself, he stated he would not be available to do so until December 2015, but did not provide any explanation. Also on September 16, 2015, Mr. Williams received notice from PSERS that Mr. Bullard was approved for disability benefits for another year.

On September 21, 2015, Mr. Bullard was sent a Statement of Charges and Notice of Hearing advising that a hearing was scheduled for October 5, 2015, to determine whether Mr. Bullard should be dismissed from employment. At Mr. Bullard's request, counsel for the AVTS agreed to a continuance of the hearing until October 12, 2015, in order from Mr. Bullard to obtain counsel. On the evening of October 11, 2015, Mr. Bullard sent an email to Mr. Williams stating that he was resigning his position as masonry instructor due to ongoing medical problems. Mr. Williams advised that he would recommend that the Operating Committee accept Mr. Bullard's resignation at its November 4, 2015 meeting. Mr. Williams further advised, however, that the hearing would be held as scheduled because Mr. Bullard had previously asserted that he wanted to return as Dean of Students even though he had been reassigned and had not submitted a medical clearance to return to any position. Mr. Bullard did not attend the

hearing before the Operating Committee. However, at the hearing on January 28, 2016, before PDE's hearing officer, Mr. Bullard argued that the Operating Committee should not have held a hearing because he had resigned.

In his appeal, Mr. Bullard not only requested that his job as Dean of Students be returned to a full-time position, he also requested that his resignation as masonry instructor should be accepted rather than accepting his termination from employment. However, in July 2015, Mr. Bullard told Mr. Williams that the position offered to him would be litigated and that what position he would return to would depend on the legal system. Although Mr. Bullard stated in the September 16, 2015 email to Mr. Williams that he was resigning from the position of masonry instructor, he clearly did not resign as an employee of the AVTS. Mr. Bullard only resigned as the masonry instructor, and he stated a clear intention to litigate the issue as to what position he would be assigned when he returned to work. Mr. Bullard had every opportunity to defend himself from termination, or to resign as a professional employee from the AVTS, which he did not do. Therefore, the Operating Committee was justified in scheduling a hearing to determine whether Mr. Bullard should be terminated from employment based on a willful neglect of duties.

Mr. Bullard was told numerous times that in order to return to work on September 9, 2015, he had to provide the AVTS with a medical release evidencing his fitness to return to work. Although Mr. Bullard clearly understood the need to provide such medical release, Mr. Bullard did not do so. The only documentation Mr. Bullard provided, which was not provided until September 9, 2015, was a letter from Dr. Krisch stating that the Dean of Students position "would be more of a possibility for him in the future than your new proposal that he return as a teacher." Although Mr. Bullard argues that he provided the necessary medical release, Dr.

Krisch's letter does not state that Mr. Bullard was released to return to work; it only states the possibility of Mr. Bullard being able to return to work in the future. This letter from Dr. Krisch was clearly different than the December 2013 letter in which he stated explicitly that Mr. Bullard was able to return to work. Dr. Krisch knew how to provide a letter evidencing Mr. Bullard's fitness to return to work, but the letter provided to the AVTS on September 9, 2015, did not evidence Mr. Bullard's fitness to return to work.

Mr. Bullard did not comply with the requests and directives of the AVTS, which required that prior to September 9, 2015, he provide a medical release evidencing his fitness to return to work. Mr. Bullard also failed to comply with the directive that he contact the AVTS to arrange for an independent medical evaluation if he was seeking an accommodation based on disability. Mr. Bullard had every opportunity to comply with these directives and willfully failed to do so. The Operating Committee provided sufficient evidence that Mr. Bullard's conduct constituted a willful neglect of duties, and therefore, his termination from employment is affirmed.

CONCLUSION

The Operating Committee provided sufficient evidence that Mr. Bullard's conduct constituted a willful neglect of duties. In addition, Mr. Bullard did not resign from the AVTS, but only from the position as masonry instructor. Therefore, the Operating Committee appropriately held a hearing to determine whether Mr. Bullard should be terminated from employment at the AVTS, and appropriately concluded that the termination should occur.

**IN THE OFFICE OF THE SECRETARY OF EDUCATION
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Appellant	:	
	:	
v.	:	
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	:	
BETHLEHEM AREA VOCATIONAL TECHNICAL SCHOOL	:	
Appellee	:	

ORDER

AND NOW, this 17th day of June, 2016, it is hereby **ORDERED** that the Bethlehem Area Vocational Technical School presented sufficient evidence that Mr. Bullard's conduct constituted a willful neglect of duties, and therefore, the decision of the Operating Committee to terminate Mr. Bullard's employment is **AFFIRMED**.

/s/ Pedro A. Rivera
Pedro A. Rivera
Secretary of Education

Date Mailed: June 17, 2016