

New Jersey Commissioner of Education
Final Decision

Tami Grimes,

Petitioner,

v.

Board of Education of the Township of Hillside,
Union County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the petitioner, Tami Grimes, pursuant to *N.J.A.C. 1:1-18.4*, have been reviewed and considered. The respondent, Hillside Board of Education (Board), did not file exceptions or a reply to the petitioner's exceptions.

Petitioner alleges that the Board improperly cut her compensation and failed to bank her sick time. Petitioner is a 10-month employee who has been employed by the Board since September 1, 2005. The Collective Bargaining Agreement between the Board and the Hillside Education Association provides a 10-month employee, hired by September 1, with 10 sick days annually that carryover year-to-year if unused. If an employee takes more sick days than she has accumulated, the employee's pay is docked to compensate for the additional time. On August 18, 2021, petitioner underwent a meniscus repair surgery and thereafter utilized sick time. Petitioner asserts that she was not paid between October 2021 and December 31, 2021, while

on authorized sick leave, despite having accumulated sick time. Additionally, petitioner alleges that she was docked “absence pay” for her absences on February 22, 2023, and March 10, 2023.

At the OAL hearing, petitioner testified on her own behalf and called Dana Veal (Veal), the former secretary for the principal at Walter O. Krumbiegel Middle School, as a witness. The Board’s payroll manager and benefits administrator, Evelyn Stanley (Stanley), and the Board’s confidential secretary for human resources and labor relations, Dana LeBoeuf (LeBoeuf), testified on behalf of the Board. Stanley and LeBoeuf testified that employees can view their absence records through the Board’s absence management tracking system called Frontline, and through the payroll portal. The portal is maintained by Computer Solutions Inc. (CSI), the District’s record-keeping system for attendance, accounting, and payroll since 2004. Approximately every week, LeBoeuf exports data, including attendance data, from Frontline into CSI. At the hearing, the Board provided a copy of petitioner’s attendance records from CSI for school years 2005-2006 through 2023-2024 (Exhibit R-1).

Veal testified that she kept paper records of employees’ sick time in a document she referred to as a Certified Staff Report. LeBoeuf heard Veal’s testimony and testified that the Certified Staff Report does not concern absenteeism. Instead, the report is a listing of all staff members, their certification codes, and job codes. The report aligns teachers with their job codes to ensure that they are teaching in the correct area.

The Administrative Law Judge (ALJ) found that a survey of the totality of evidence cast substantial doubt on petitioner’s version of events and that Veal’s testimony regarding the contents of the Certified Staff report was overborne by testimony from LeBoeuf. The ALJ found that the Board’s witnesses were credible and presented consistent and persuasive testimony

which was supported by other offered evidence. In doing so, the ALJ rejected petitioner's arguments that the Board's testimony and documents regarding petitioner's sick time should be disregarded as inadmissible hearsay. Ultimately, the ALJ concluded that petitioner had not sustained her burden of establishing, by a preponderance of the credible evidence, that she is entitled to more sick leave than indicated in the Board's records. The ALJ also concluded that petitioner did not establish that the Board wrongly failed to pay a portion of her 2021 leave of absence and improperly docked her for "absence pay."

In her exceptions, petitioner reiterates arguments that were considered and rejected by the ALJ, namely that the Board's witnesses have no personal knowledge of the sick time petitioner took and that the hearsay evidence relied upon by the ALJ was not corroborated by legally competent evidence in the record, and therefore does not satisfy the residuum rule. *N.J.A.C. 1:1-15.5(b)*. Petitioner also takes exception to the ALJ's finding that no credible evidence undermines the trustworthiness of Exhibit R-1. In addition, petitioner contends that none of the Board's documents were proffered as self-authenticating and therefore cannot "speak for themselves" as a matter of law. Lastly, petitioner argues that several of the Board's exhibits were introduced as exhibits which were created as part of its calculation as to the time owed petitioner.

Upon review, the Commissioner concurs with the ALJ – for the reasons stated in the Initial Decision – that petitioner did not sustain her burden of establishing, by a preponderance of the evidence, that she is entitled to accumulated sick leave beyond the days reflected in the Board's records. The Commissioner further concurs with the ALJ that petitioner failed to show, by a

preponderance of credible evidence, that the Board improperly failed to pay some of her 2021 sick leave and improperly docked her for absence pay.

The Commissioner does not find petitioner's exceptions to be persuasive.¹ Petitioner argues that the Board cannot accomplish its burden of proof simply by introducing hearsay evidence. However, as the ALJ correctly concluded, the burden of proof in the instant matter rests with petitioner. She did not meet her burden. Petitioner provided no documentation to support the number of sick days she claims she accumulated or is owed, nor did she provide documentation challenging the information contained in Exhibit R-1. Petitioner did not produce any records or documentation indicating flaws in the CSI system. She submitted no credible documentation or witness testimony supporting her belief that a person within the District modified her number of accumulated sick days. Petitioner testified that she did not know the number of sick days she took between 2005 and the day of the hearing, and she could only provide an estimate of sick days she took each year. Notably, petitioner testified that she had not checked how many sick days she had prior to her surgery, and that nothing prevented her from examining her own records. Moreover, the Commissioner concurs with the ALJ's determination that Exhibit R-1 qualifies as admissible hearsay under the exception for records of regularly conducted activity. *N.J.R.E.* 803(c)(6).

Petitioner takes exception to the ALJ's finding that no credible evidence undermines the trustworthiness of Exhibit R-1, arguing that the ALJ disregarded Veal's testimony that emails and a paper file exist that contradict the data in Exhibit R-1. The Commissioner notes that the ALJ

¹ Petitioner's inclusion of the Board's response to Request for Admissions and the Board's response to discovery demands is improper per *N.J.A.C.* 1:1-18.4(c). Therefore, these documents were not considered.

had the opportunity to assess the credibility of the various witnesses who appeared before her and make findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. *N.J.S.A. 52:14B-10(c)*.

The Commissioner finds no basis in the record to disturb the ALJ's credibility assessment regarding Veal's testimony about the Certified Staff Report. The ALJ did not demonstrate bias against Veal, and Grimes admitted under oath that she never saw the Certified Staff Report. Instead, the ALJ found LeBoeuf's testimony to be more credible and properly placed more weight on that evidence.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 10, 2025
Date of Mailing: January 13, 2025

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 05678-23

AGENCY DKT. NO. 153-6/23

TAMI GRIMES,

Petitioner,

v.

BOARD OF EDUCATION OF THE

TOWNSHIP OF HILLSIDE,

UNION COUNTY,

Respondent.

Juan C. Fernandez, Esq. for petitioner (Fernandez Garcia, attorneys)

Ray Hamlin, Esq., for respondent (Hunt, Hamlin & Ridley, attorneys)

Record Closed: July 19, 2024

Decided: October 16, 2024

BEFORE **MARGARET M. MONACO**, ALJ:

STATEMENT OF THE CASE

Petitioner Tami Grimes (Grimes) challenges action by respondent Board of Education of the Township of Hillside (the Board or the District) regarding her sick time and the reduction of her compensation for “absence pay.”

PROCEDURAL HISTORY

On June 1, 2023, Grimes filed a Verified Petition of Appeal with the Commissioner of Education contesting the Board's action regarding her sick time and "absence pay."¹ Grimes alleges that the Board improperly and in bad faith cut her compensation and failed to bank her sick time. Specifically, Grimes asserts that she was not paid between October 2021 through December 31, 2021, when she was on authorized sick leave even though she had accumulated sick time, and she was also docked for "absence pay" relating to her absences from work on February 22 and March 10, 2023. On June 26, 2023, the Board filed an Answer to Petition, and the Department of Education transmitted the matter to the Office of Administrative Law for determination as a contested case. The hearing was held on February 21 and 22, 2024, after which the record remained open pending the receipt of transcripts of the hearing and post hearing submissions. The parties submitted briefs and reply briefs in support of their respective positions and the record closed upon receipt of the last submission.

FACTUAL DISCUSSION

At the hearing, the Board offered testimony by Evelyn Stanley and Dana LeBoeuf. Grimes testified on her own behalf and presented testimony by Donna Veal.

Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the demeanor and assess the credibility of the witnesses who testified, I **FIND** the following pertinent **FACTS** and accept as **FACT** the testimony set forth below.

Grimes has been employed as a teacher in the District since September 1, 2005. She is currently assigned to the Hillside Innovation Academy and was previously assigned to the Walter O. Krumbiegel Middle School.

¹ Although Grimes alleged other claims in her Verified Petition of Appeal relating to longevity pay and the Board's alleged inaction regarding her grievance, the evidence offered at the hearing focused on Grimes's sick days and absence pay related claims.

Evelyn Stanley (Stanley) has been employed by the Board for approximately nineteen years as its payroll manager and benefits administrator.

Dana LeBoeuf (LeBoeuf) has been employed by the Board for twenty-three years and has served in her present role as a confidential secretary for human resources and labor relations for approximately twenty-two years. As a confidential secretary for human resources and labor relations, LeBoeuf is responsible for attendance, including verifying days that are requested via paper and recording leaves of absence. She assumed the responsibility for attendance in October 2021, after another confidential secretary, Maria Cruz, passed away.

Grimes is a ten-month employee. A ten-month employee who is employed as of September 1 receives ten sick days each year. Sick days carryover from year to year. If an employee exceeds the employee's allotted and accumulated sick days, the employee's salary is docked for the sick time taken. A sick leave bank is made available to employees. In 2021, an employee had to donate a sick day to become a member of the sick leave bank. (See P-6.) A member of the sick leave bank who exhausted his/her accumulated sick time could apply to the sick bank committee for donated time. Grimes was not a member of, or donor to, the sick leave bank.²

The District provides a cash incentive for perfect attendance. If an employee has not taken any sick or personal days during the school year, the employee would be compensated based on the number of years that the employee obtained perfect attendance. Grimes does not assert, and no evidence supports, that she achieved perfect attendance in any given year.

The District maintains a computerized system to track an employee's time off from work, including sick days. The District's absence management tracking system, formerly known as AESOP, is part of the Frontline attendance system. Employees are responsible for inputting his/her absence into Frontline. The staff member would log into Frontline before 6:30 a.m. on the date of the absence and input his/her absence, along with the

² Although the collective bargaining agreement dated July 1, 2021 through June 30, 2024 changed the policy regarding the sick leave bank, that agreement was not ratified until 2022.

type of time taken (e.g., sick day, personal day). If the employee misses the cut-off time, the employee would call the school secretary, who has access into Frontline, and advise of the day being taken and the type of day taken. When a staff member submits a request for an absence via paper, LeBoeuf would verify that the employee has entered that day into Frontline. LeBoeuf explained that paper requests are not used for sick days but for days that require additional documentation such as a jury duty day. On an approximate weekly basis, LeBoeuf exports the attendance information from Frontline into the District's software system, Computer Solutions, Inc. (CSI). CSI is the District's record keeping system for attendance, payroll, and accounting. Employees cannot access the CSI system.

An employee can access Frontline and view the number of accumulated days that the employee has available, including sick time. Employees can also obtain information regarding their accumulated sick days by accessing the District's payroll portal. Prior to October 2021, Ms. Cruz informed all employees on a yearly basis of their ability to review information related to their accumulated leave. Specifically, Ms. Cruz's annual letter advised the staff that their October paystub included an attendance summary, and the employee could also access their days through the payroll portal. (See R-2.)³ The letter further advised that employees should check with their school secretary should there be any discrepancies and contact Ms. Cruz if there is still a concern. The employees' October paystub includes a summary of days used and remaining, including sick time. (See P-4.)

Grimes had meniscus repair surgery on August 18, 2021, and she took sick time after that surgery. On October 5, 2021, Grimes sent an e-mail to LeBoeuf advising that her doctor had left her return date open. (R-3.) In response, LeBoeuf informed Grimes, "[y]ou currently have 15 sick days left," and LeBoeuf inquired, "[d]o you want to continue using them?" (Ibid.) In an e-mail sent on October 5, 2021, Grimes stated, "Yes! Please use the 15 days I have left." (Ibid.)

³ Prior to the District having its payroll portal, Ms. Cruz's letter included the number of days that the employee had available.

In December 2021, Grimes sent e-mails to Stanley and LeBoeuf requesting a printout of her time/days. (P-2.) On February 16, 2022, Grimes sent an e-mail to Stanley thanking her for the printout and indicating that she needed a printout from 2005 to present. (P-2.) Grimes was later provided with the requested information, which consisted of yearly attendance records from CSI. (P-5; see R-1.)

At the hearing, the Board offered a copy of Grimes's attendance records from CSI for the 2005–2006 through the 2023–2024 school years, which Stanley had printed out. (R-1.) As part of her duties and responsibilities, Stanley reviews the information contained in R-1 for payroll purposes. The printout includes monthly calendars, along with a summary for each school year indicating time taken, time remaining, time allowed, and time carried over for different types of days (e.g., sick, personal, school business, family illness). Regarding Grimes's sick time for the school years (SY) 2005–2006 through 2023–2024, R-1 reflects the following:

2005–2006 SY: Grimes received 10 days, used 8 days, and had 2 days remaining.

2006–2007 SY: Grimes received 10 days, had a carryover of 2 days, used 10 days, and had 2 days remaining.

2007–2008 SY: Grimes received 10 days, had a carryover of 2 days, used 9 days, and had 3 days remaining.

2008–2009 SY: Grimes received 10 days, had a carryover of 3 days, used 4 days, and had 9 days remaining.

2009–2010 SY: Grimes received 10 days, had a carryover of 9 days, used 6 days, and had 13 days remaining.

2010–2011 SY: Grimes received 10 days, had a carryover of 13 days, used 9 days, and had 14 days remaining.

2011–2012 SY: Grimes received 10 days, had a carryover of 14 days, used 3 days, and had 21 days remaining.

2012–2013 SY: Grimes received 10 days, had a carryover of 21 days, used 7 days, and had 24 days remaining.

2013–2014 SY: Grimes received 10 days, had a carryover of 24 days, used 10 days, and had 24 days remaining.

2014–2015 SY: Grimes received 10 days, had a carryover of 24 days, used 11 days, and had 23 days remaining.

2015–2016 SY: Grimes received 10 days, had a carryover of 23 days, used 7 days, and had 26 days remaining.

2016–2017 SY: Grimes received 10 days, had a carryover of 26 days, used 5.5 days, and had 30.5 days remaining.

2017–2018 SY: Grimes received 10 days, had a carryover of 30.5 days, used 15 days, and had 25.5 days remaining.

2018–2019 SY: Grimes received 10 days, had a carryover of 25.5 days, used 15 days, and had 20.5 days remaining.

2019–2020 SY: Grimes received 10 days, had a carryover of 20.5 days, used 4.5 days, and had 26 days remaining.

2020–2021 SY: Grimes received 10 days, had a carryover of 26 days, used 12 days, and had 24 days remaining.

2021–2022 SY: Grimes received 10 days, had a carryover of 24 days, used 42.5 days, and had a negative 8.5 days remaining.

2022–2023 SY: Grimes received 10 days, had a carryover of a negative 8.5 days, used 1.5 days, and had 0 days remaining.

2023–2024 SY: Grimes received 10 days, had carryover of 0 days, used 5.5 days, and had 4.5 days remaining.

LeBoeuf testified that the information in R-1 is information that is regularly kept by the District, and the only place where attendance is stored is CSI and Frontline. The information reflected in R-1 is the result of what the employee entered into Frontline, which is then exported into CSI. LeBoeuf has not seen any written records of an employee's sick days of absence, and she is not aware of any location in the District where an employee's attendance records are stored other than the District's software system. LeBoeuf has never seen any records or documentation that differs from the information in R-1 for Grimes. LeBoeuf explained that she could access Frontline and click on the absence to ascertain who entered the day, and she can print a report from Frontline. However, this can only be done for one year from the date of her inquiry.

Similarly, Stanley described that attendance is stored in Frontline and CSI, and she has never seen any paper attendance records for Grimes. To Stanley's knowledge, the District did not maintain attendance records through non-computer means (i.e., paper records). Stanley was not aware of any paper attendance records maintained at the schools.

LeBoeuf never received any communication from Grimes regarding the number of sick days that she believed that she had versus the days contained in R-1. LeBoeuf did not recall ever being alerted by Grimes to a discrepancy in the days contained in Frontline. LeBoeuf, the Superintendent, and the Director of Human Resources have access to all of the employees' records. LeBoeuf believed that another individual (Ms. Melgar) might also have access but did not believe that she could make changes to the system. LeBoeuf has not received complaints from other employees claiming an entitlement to more days than the days that appeared on the system except for one teacher who had entered days that she did not take and had a printout from absence management regarding what the carryover should have been. LeBoeuf was never advised by an employee that the employee believed that the system was tampered with; she never heard of any instance where an employee complained to her or anyone else in the office about someone accessing their log-in information; and she has never seen or heard of any complaints from a District employee regarding inaccurate information that was entered in the system by someone else.

Stanley has not seen any documentation from Grimes regarding the number of days that Grimes believes that she currently has available. She never had any communications with Grimes where Grimes told her, "I have 'X' amount of days versus what the [D]istrict says I have." Stanley has not experienced any issues with other employees saying their sick time is incorrect, and she was not aware of the District having that problem.

LeBoeuf and Stanley explained that Subfinder was the system that the District previously used to employ substitute teachers. When a teacher was out, the District used Subfinder to enter those days, and that system would call a substitute to replace the

teacher. Substitutes can now log into Frontline to ascertain whether a job is available. The District started using CSI in 2004, and the District's payroll system has not changed since 2004. Regarding Frontline, LeBoeuf testified that the District had Frontline for approximately seven years and then paused it for about two years and started it back up maybe three years ago. Regarding the pause in Frontline, she testified, "So, Frontline is . . . —it was absence management. When we were using it to utilize or secure substitute teachers, that system had stopped and we went back to the old way of obtaining substitute teachers. It had nothing to do with the attendance part." Ms. Cruz, and not LeBoeuf, was part of the implementation process when the District switched from Frontline to Subfinder, and LeBoeuf was not part of the process in terms of integration when Frontline was brought back approximately two years later.

In addition to the evidence that forms the foundation of the aforesaid findings of fact, a summary of other pertinent testimony follows.

The Testimony

Donna Veal

Veal was employed as the principal's secretary at the Walter O. Krumbiegel Middle School from July 2009 until her retirement effective January 1, 2021. Veal described that her duties entailed, among others, maintaining attendance records, including record keeping relating to teachers' attendance, and she worked closely with Ms. Cruz. When she was first employed, all employees would go into the Subfinder system and input their absences except for certain types of absences. Employees could input their sick time and family sick time, and employees were responsible for inputting their time into the system. A Request for Absence form needed to be completed and approved by the principal for personal business and school business requests, and Veal would input that time into the system after the principal signed off on the document. Veal testified that only individuals with an administrative capability would be able to make changes to days in the system unless the employee gave someone his/her log-in information. During her employment, Veal never received any reports from Grimes or any other employee that it

appeared that someone from the Central Office had added days that the employee did not take.

According to Veal, she kept computer and paper records of teachers' sick time. She referred to a Certificated Staff Report, which she believed was to determine the percentage of sick time utilized by certificated teaching staff each month. Veal described that she had an Excel spreadsheet containing the names of all the teachers; she would pull information from Subfinder or AESOP regarding absences; and she would record the absences on the spreadsheet for the particular day of the month. At the end of the month, Veal would add up the total number of sick days for every teacher and calculate the monthly percentage for the building. She would send to Ms. Cruz in paper form the cover sheet listing the percentage along with copies of the Excel spreadsheet for that month. Ms. Cruz would initial it and forward a copy or the original with her initials back to Veal, which Veal would file. Veal kept the documentation in a hanging folder labeled "Certificated Staff Report" in the right-hand side of her desk. According to Veal, there were eleven years of these attendance documents when she left employment, and Veal would be able to state the number of sick days that she reported monthly to the Central Office regarding Grimes if she had that documentation. Veal testified that she routinely provided a record of absences in connection with a staff member's evaluation. She also would be called if a teacher missed the cut-off time for inputting his/her absence in the system, and she sent out an e-mail to the entire staff by 8:00 a.m. every morning that listed who was absent and the person covering that absence.

Veal recalled that Grimes used her personal and family illness days every year between 2009 and 2020 because those days could not be carried over. When asked how many sick days Veal recalled Grimes taking between 2009 and 2020, she testified, "I can't answer that, like I don't have that kind of a memory to tell you in any given year, off the top of my head, what she took as far as days," and she could not give "an exact number per year." Veal also articulated her belief that "it would be no more than one or two actual sick days in any calendar year," except for one year when Grimes had the flu and there "were consecutive days of absence[.]" Veal did not recall Grimes calling out sick except for a couple times a year, and she did not recall Grimes ever taking ten sick days in a year. Veal had never seen a report like R-1 during her employment. When shown R-1,

Veal did not recall Grimes taking 9 sick days in 2010, 11 sick days in 2014, 15 sick days in 2017 and 2018, and 12 or 16 sick days in 2020. Veal admitted that she did know how many sick days Grimes took during any school year. She did not recall Grimes taking double digit days except for the one year when she had the flu.

On cross-examination, Veal was unable to recall the specific number of teachers at the school during her employment, and she had difficulty remembering the names of individuals who held various positions along with the number of students at the school. Veal acknowledged that there were a lot of absences at the school. She was unable to state the number of absences in March 2015. Veal acknowledged that during her employment she never had a conversation with Grimes about her accumulated time. Veal admitted that she had no documentation to support her belief that Grimes did not take that many sick days.

Tami Grimes⁴

Grimes testified that in September 2021, she reached out to LeBoeuf about her FMLA status. According to Grimes, LeBoeuf “let me know that I had enough days to be out, to be covered under sick days for the 15th of September, the 30th of September, October 15th and I think I would be paid partial for the October 30th, . . . and . . . she said I think I had thirty days, I don’t recall but it wasn’t enough days[.]” Grimes described that she said, “Why? I didn’t realize I didn’t have that many days, I thought I had days. I would’ve never scheduled a surgery had I known I didn’t have the days[.]” At that time, Grimes asked, “do we still have the sick bank in the district to use,” and LeBoeuf advised, “‘No,’ we didn’t have it at that time. It wasn’t available for [Grimes] to use at that time.” Grimes indicated that she did not know until she heard the testimony that an employee had to be a part of the sick bank to use it. Grimes later described that during the September conversation when LeBoeuf informed her that she did not have enough sick time for her illness, Grimes indicated that she “should have days,” she has “never taken

⁴ It is undisputed that events regarding Grimes’s surgery and later use of sick time occurred in 2021–2022. On various occasions during her testimony, Grimes referred to 2020 rather than 2021. The summary of her testimony will include the correct 2021 year.

off that many days, [and] if [she] didn't have days [she] would never even had the surgery," and LeBoeuf stated that "she was only going by what was in the system[.]"

When asked whether she actually had sick days when she was not paid for the sick days in 2021, Grimes testified, "I thought I did . . . [b]ecause I know that I come to work every day and I know how many days that I use in a year." Grimes acknowledged that she elected to have surgery prior to checking how many sick days she had. When asked whether she contacted LeBoeuf prior to her surgery to check how much accumulated sick leave she had, Grimes testified, "I wouldn't have had to contact Ms. LeBoeuf, I would've contacted Ms. Cruz because she was still alive at the time and we have the absent management system and I just knew that I had the days so I never checked. No, that was my -- my negligence for not checking." Grimes acknowledged that she never had a discussion with Cruz about her sick time. Grimes admitted that she did not check her sick time on the absence management system, and she did not look at her yearly October statements that included the number of her accumulated days. Grimes acknowledged that she did not have a discussion with anyone about her accumulated sick time or lack thereof before she was not paid for part of the time that she was out for her surgery. Grimes recalled receiving the letter from Ms. Cruz to all employees regarding their accumulated leave at least once or twice prior to 2021. (R-2.) Grimes admitted that nothing prevented her from checking her own records regarding her accumulated leave, she never checked her records, and she never looked at the payroll portal before "this case has come up[.]" According to Grimes, in her October e-mail advising LeBoeuf to use her 15 days (R-3), she did not indicate that she had like 45 more days "[b]ecause [LeBoeuf] had already told [her] that [she] didn't have any days left." Grimes acknowledged that there is no writing contemporaneous with R-3 where she disputed the number of sick days that she had.

Grimes also testified that she went into AESOP the same day that LeBoeuf informed her that she did not have days and Grimes inquired about the sick bank. When asked why she would send an inquiry in October about what days she had left if she went on the system in September, Grimes testified, "so I'm misspeaking because I'm getting confused" and then stated that she went on the system when LeBoeuf e-mailed her in October about the 15 days she had left. Grimes later stated that she talked to LeBoeuf

in September and October and went on the system in September and October. Grimes admitted that she did not have any document to prove that the District's calendars and records were inaccurate, to prove the amount of sick time that she had, or to disprove the information contained in R-1.

Grimes testified that she did not know how many sick days she took between 2005 and her testimony. She did not believe that she took 8 sick days in 2005 because she "just started working for the district[.]" Grimes testified that she did not take 10 sick days in 2006, and she has "never taken ten sick days in [her] whole career." Grimes indicated that she did not think that she took 9 sick days in 2007; she "probably" took 4 sick days in 2008; she was not sure if she took 6 sick days in 2009; she did not take 9 sick days in 2010; she "probably" took 3 sick days in 2011; she could have taken 7 sick days in 2012; she did not take 10 sick days in 2013 or 11 sick days in 2014; she "probably" took 7 sick days in 2015; she was not sure if she took 5.5 sick days in 2016; she did not take 15 sick days in 2017 or 15 sick days in 2018; she was not sure if she took 4.5 sick days in 2018 [sic]; she did not take 12 or 16 sick days in 2020; she could have taken 42.5 sick days in 2021 because of her surgery; she could have taken 1.5 sick days in 2022; and she was not sure if she took 5.5 sick days in 2023.

Grimes testified that "[a]t the time of [her] surgery [she] should've at least had, at the least, maybe like 102 days, give or take, 75" sick days "[b]ecause when I add up the years that I've been employed in Hillside, and I get ten sick days a year, so you figure out of those sick days I might've taken, sick days, maybe at the most four days one year, and maybe the other years two or three days, so that's what I'm -- I'm seeing 75 maybe at the least." According to Grimes, she took "maybe three to four, if that" sick days in 2007; she took "maybe . . . two or three" sick days in 2012; and she had "never taken more until recently [of] over two to three sick days a year." In response to counsel's question, "I thought on direct you said no more than four" days a year, Grimes responded, "Okay, four days a year." She indicated that she had never taken 10 or 15 sick days in her career except for her surgery. Grimes did not know the specific years that she used 4 sick days. Regarding how many sick days Grimes took each year, Grimes acknowledged, "I don't know definite," but she could say "definitively" that she never took 7 or 9 sick days.

Grimes testified, “My sole reason for challenging [the District’s information] is because I believe that my days were altered prior to Ms. Cruz being deceased I believe I had days and I believe the [D]istrict altered them.” Regarding whom in the District would have altered her days, Grimes indicated, “I don’t know, whoever had access to the CSI System.” Grimes articulated her belief that there was fraudulent conduct related to her sick days. She testified:

I’ll take it back to Sub Finder, I believe that when I came to the district in 2005 . . . and when they switched the systems from Sub Finder to AESOP that, in fact, there were employees whose days were missing and that weren’t accurate, and I probably was one of those employees, but because I did not check I did not know, so that went unchecked. And in the process of Ms. Cruz passing away, I think if Ms. Cruz would’ve been living we wouldn’t be here in Court, this would be a mute [sic] issue. But whoever took over for Ms. Cruz, I guess they -- this is my speculation, covering or covering for the district or doing what, but I believe that my days were put in for me to be absent that were not in fact the days that I was absent. I believe that, yes, it was some type of criminal activity, because it is criminal when you mess with people’s personnel records, on the district’s part. I do believe that.

Grimes claimed that she lost “about \$24,000” in pay when she was out on leave between October through December 31, 2021. Grimes offered P-9, which she stated was from her absent management system that she accessed on March 27, 2022. P-9 lists the following current balances: 15 sick days; 2 personal business days; 1 family illness days; and minus 15 FMLA-Paid-Admin days. Grimes indicated that, although she was told in 2021 that she had no sick time, P-9 reflects that she had 15 sick days. Grimes agreed that she cannot take paid FMLA unless she had sick days. Regarding what the negative FMLA Paid-Admin means, Grimes testified, “It means that I guess I was paid for my FMLA when I was out.” In or around April 15, 2023, Grimes was also docked for “absence pay” relating to her absences from work on February 22 and March 10, 2023.

Dana LeBoeuf

LeBoeuf had not previously seen a document like P-9. She noted that it is from Grimes’s mobile app and is geared toward the employee and not the employer.

LeBoeuf explained that R-1 reflects that Grimes had 34 sick days for the 2021–2022 school year (i.e., 10 days received and a carryover of 24 days). Grimes utilized 34 paid FMLA days toward her leave of absence in 2021, which left her with zero days for the remainder of the year. In March, April, May, and June 2022, sick days were entered in the system beyond Grimes’s total allotment for the 2021–2022 school year. Grimes used 8.5 extra sick days and was paid for them. This led to Grimes having a remaining negative balance of 8.5 sick days as of June 30, 2022. The sick days would have been entered in the system by Grimes or the school secretary if Grimes missed the cut-off time. LeBoeuf explained that an employee can go in his/her portal and put in for paid sick days when the employee does not have the days if the system is overridden. When the days were entered beyond Grimes’s sick time allotment, an error message would have come up indicating that she did not have the time, and if the “Okay” option was clicked the day would be entered as a sick day. LeBoeuf indicated that the extra days should have been docked, but Grimes was paid for them because the system was overridden. This resulted in a negative carryover in the 2022–2023 school year. In September 2022, Grimes would receive 10 new sick days. However, there was a negative carryover of 8.5 sick days from the 2021–2022 school year, leaving Grimes with a balance of 1.5 sick days to utilize in the 2022–2023 school year. Grimes would be able to see the negative 8.5 day carryover and the 1.5 balance on the absence management system. R-1 reflects that Grimes was docked for February 8 and March 30, 2023, because there were no days available for her to use.

LeBoeuf heard Veal’s testimony. LeBoeuf testified that she did not know what Veal did but the document she referenced is not a Certificated Staff Report. She explained that a Certificated Staff Report is a report from the New Jersey Department of Education, which basically is a listing of all staff members, their certification codes and their job codes. The report aligns the teachers with their job codes to ensure that they are teaching in the proper areas. The report does not have anything to do with attendance and does not include sick time.

LEGAL DISCUSSION AND CONCLUSIONS

Grimes shoulders the burden of proving her sick time and absence pay claims by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). This forum has the duty to decide in favor of the party on whose side the weight of the evidence preponderates, and according to a reasonable probability of truth. Jackson v. Del., Lackawanna & W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). Evidence is said to preponderate “if it establishes ‘the reasonable probability of the fact.’” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must “be such as leading a reasonably cautious mind to the given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). Precisely what is needed to satisfy this burden necessarily must be judged on a case-by-case basis.

Grimes contends that she has satisfied her burden of proving the sick time owed to her by the Board and that she had 107 sick days as of 2022. Grimes argues that the Board’s witnesses were unable to verify that the entries in R-1 were accurate; the witnesses had no personal knowledge of the sick time utilized by Grimes; the Board’s documents and/or testimony regarding Grimes’s sick time is hearsay and should be disregarded; and the testimony by Grimes and Veal is the only competent factual evidence regarding the sick time Grimes utilized. Grimes further asserts that the Board failed to review or produce other existing records to determine Grimes’s sick time (e.g., faculty evaluations, Excel spreadsheets sent to Ms. Cruz), which should result in an adverse inference against the Board.⁵

In evaluating the evidence presented, it is necessary for me to assess the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is the value that a finder of the facts gives to a witness’s testimony. It requires an overall assessment of the witness’s story in light of its rationality or internal consistency and the manner in which it “hangs together” with the other evidence. Carbo v. United

⁵ Grimes’s brief will not be considered to the extent that it relies on allegations in the Verified Petition of Appeal that were not part of the hearing record and attaches documents that were not introduced at the hearing.

States, 314 F.2d 718, 749 (9th Cir. 1963). “Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself,” in that “[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances.” In re Perrone, 5 N.J. 514, 522 (1950). A fact finder “is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth.” Id. at 521–22; see D’Amato by McPherson v. D’Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may also reject testimony as “inherently incredible” and when “it is inconsistent with other testimony or with common experience” or “overborne” by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Further, “[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep’t of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

In judging the strength of the evidence and evaluating the credibility of the witnesses, I found the Board’s witnesses to be forthright and credible witnesses. They presented persuasive and substantially consistent testimony as to the pertinent facts, which was corroborated by other offered evidence, and the strength and credibility of this testimony was not, in my view, undermined by counsel’s thorough cross-examination. The record is devoid of credible evidence suggesting that the witnesses harbored any motive or bias to fabricate their versions of the relevant facts. Plainly, on balance, Grimes has a greater stake in the outcome of this proceeding.

I am unpersuaded by Grimes’s argument that the Board’s testimony and/or documents addressing her sick time should be disregarded because it is hearsay. Hearsay evidence is admissible in administrative proceedings and “shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and,

generally, its reliability.” N.J.A.C. 1:1-15.5(a). Notwithstanding the admissibility of hearsay evidence, the “residuum rule” requires that “some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.” N.J.A.C. 1:1-15.5(b). See Weston v. State, 60 N.J. 36, 51 (1972).

In the within matter, Stanley printed R-1 from the Board’s CSI system, and the report qualifies as admissible hearsay under the hearsay exception for records of regularly conducted activity. See N.J.R.E. 803(c)(6). The sick time reflected in R-1 consists of absences that the employee (or the school secretary) entered into Frontline, which LeBoeuf then exported into CSI. LeBoeuf testified that the information in R-1 is information that is regularly kept by the District, and Stanley reviews the information contained in R-1 for payroll purposes as part of her duties and responsibilities. Clearly, the Board has a responsibility to maintain records of its employees’ absences. The information in R-1 was made in the regular course of business, it was the regular practice of the Board to make such records, and no credible evidence undermines the trustworthiness of R-1, which was printed from the Board’s computerized record keeping system used in part for payroll purposes.

Succinctly stated, I found Grimes’s testimony to be riddled with inconsistencies, lacking internal consistency, and not “hanging together” with, and discredited and overborne in significant respects by, other evidence in the record. A canvas of the totality of the evidence casts substantial doubt on the accuracy, reliability, and believability of Grimes’s version of the events. For example, divergent testimony was offered regarding when Grimes went into the system to check her sick time and the maximum number of sick days that Grimes took in a school year during her career. Grimes further testified that at the time of her September 2021 conversation with LeBoeuf, “I didn’t realize I didn’t have that many days, I thought I had days. I would’ve never scheduled a surgery had I known I didn’t have the days[.]” In other words, Grimes was not herself aware of the number of accumulated sick days that she then had, and Grimes admitted that she did not check with the District’s personnel in advance of her surgery to ensure that she had the needed accumulated leave. Beyond this, rather than challenging the information from LeBoeuf that she did not have the requisite accumulated leave, Grimes instead inquired

about the sick bank, which she was not entitled to benefit from. Grimes further admitted that she never had a discussion with Cruz about her sick time; she did not check her sick time on the absence management system; she did not look at her yearly October statements that included the number of her accumulated days; and she never looked at the payroll portal before “this case has come up[.]” She also admitted that nothing prevented her from checking her own records regarding her accumulated leave, and she did not possess any document to prove that the District’s calendars and records were inaccurate, to prove the amount of sick time that she had, or to disprove the information contained in R-1. And Grimes admitted that she did not know how many sick days she took between 2005 and her testimony. Regarding how many sick days she took each year, Grimes acknowledged that she only gave estimates, and she did not know definitively how many days that she took each year.

Grimes offered no documentation in support of the number of sick days that she claims she accumulated and is owed, and no documentation to refute the information in the Board’s records. Although Grimes may genuinely believe that she should have more accumulated sick days, the record is bereft of any documented evidence to corroborate her belief. Indeed, Grimes’s testimony makes clear that she cannot herself state the number of accumulated sick days that she possessed, and the number of sick days that she used, during her years with the District. Equally lacking is any credible evidence to support Grimes’s belief that some unknown person altered the amount of her sick days, which I found to be inherently improbable and inconsistent with common experience.

I place no weight on Veal’s testimony regarding the number of sick days that she believed Grimes used. I find it inherently improbable that, although Veal could not recall various matters during her employment (e.g., number of teachers or students at the school), she knew the number of sick days that one employee may or may not have taken without the benefit of any documentation to support that belief. And Veal candidly admitted that she did know how many sick days Grimes took during any school year. I further found Veal’s testimony regarding the contents of the Certificated Staff Report, which Grimes admitted that she never saw, to be overborne by that offered by LeBoeuf.

In sum, I **CONCLUDE** that Grimes failed to establish, by a preponderance of the credible evidence, that she is entitled to accumulated sick leave beyond the amount reflected in the Board's records. I further **CONCLUDE** that Grimes failed to establish, by a preponderance of the credible evidence, that the Board improperly failed to pay a portion of her 2021 leave of absence and improperly docked her for "absence pay" in 2023.

ORDER


I **ORDER** that petitioner's Petition of Appeal be and hereby is **DISMISSED WITH PREJUDICE**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

October 16, 2024
DATE



MARGARET M. MONACO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

List of Witnesses

For Petitioner:

Donna Veal

Tami Grimes

For Respondent:

Evelyn Stanley

Dana LeBoeuf

List of Exhibits in Evidence

For Petitioner:

P-1 No exhibit admitted

P-2 E-mails and letter dated February 2, 2022

P-3 Employee Benefits Contributions Invoice dated March 16, 2022

P-4 2021 and 2022 W-2s and paycheck information for October 30, 2018 and April 6, 2023 pay dates

P-5 E-mail dated February 17, 2022 and attachments

P-6 Agreement between the Hillside Board of Education and the Hillside Education Association (July 1, 2017 through June 30, 2020)

P-7 Agreement between the Hillside Board of Education and the Hillside Education Association (July 1, 2021 through June 30, 2024)

P-8 Verified Petition of Appeal

P-9 Printout from Absence Management

For Respondent:

R-1 Employee Attendance records

R-2 Letter from Maria Cruz to Staff

R-3 E-mails dated October 5, 2021