

ERIN MARKAKIS, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 NEW JERSEY STATE DEPARTMENT OF : DECISION  
 EDUCATION, OFFICE OF CRIMINAL :  
 HISTORY REVIEW, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioner, a tenured fourth grade teacher, appealed the Department’s determination disqualifying her from school employment pursuant to *N.J.S.A. 18A:6-7.1(c)* following her guilty plea to assault by auto pursuant to *N.J.S.A. 2C:12-1c(2)*. Such guilty plea was a consequence of a three car accident in which petitioner failed to maintain control of her vehicle, crossed over the center line into oncoming traffic, and caused a crash which resulted in injuries to five individuals, including serious internal injuries to a three year old child who was airlifted from the scene and hospitalized for 24 days as result of the trauma. Petitioner was found to have a blood alcohol level of .197%, more than twice the legal limit. Cross motions for summary decision were filed by both parties.

The ALJ found that: the facts in the matter are not in dispute, and the matter is ripe for summary decision; the crime petitioner was charged with – and pled guilty to – was a 3<sup>rd</sup> degree crime under *N.J.S.A. 2C:12-1(c)(2)*, which involves serious bodily injury; her conviction falls within the purview of the disqualification statute, *N.J.S.A. 18A:6-7.1(c)(1)*; reckless behavior can form the basis of a conviction of aggravated assault and manslaughter, crimes listed as disqualifiers under *N.J.S.A. 18A:6-7.1(c)(1)*; the facts in *Christopher Parshelunis v. New Jersey Department of Education, Office of Criminal History Review*, are distinguishable from the instant case. Accordingly, the ALJ granted respondent’s motion for summary judgment and affirmed petitioner’s disqualification from school employment.

The Commissioner adopted the Initial Decision as the final decision in this matter, and affirmed petitioner’s disqualification from school employment.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

September 1, 2011

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions and respondent's reply thereto<sup>1</sup> were fully considered by the Commissioner in reaching his determination herein.

Petitioner's exceptions, in relevant part, recast and reiterate her arguments made before the Administrative Law Judge (ALJ) below, again relying on *Christopher Parshelunis v. New Jersey Department of Education, Office of Criminal History Review*, Commissioner's Decision #458-08, decided November 25, 2008, as dispositive in this matter. As it is determined that petitioner's arguments were fully considered and addressed in the Initial Decision, they will not be revisited here.

Upon full review and consideration, the Commissioner concurs with the ALJ that petitioner is permanently disqualified from school employment, pursuant to *N.J.S.A. 18A:6-*

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<sup>1</sup> It is noted that respondent sought and was granted an extension of time within which to file reply exceptions which were duly submitted in accordance with the extended timeline.

7.1(c)(1). In so concluding, the Commissioner notes the following uncontroverted facts: On August 13, 2010, petitioner pled guilty to third degree Assault by Auto in violation of *N.J.S.A. 2C:12-1c(2)*. Such guilty plea was a consequence of a three car automobile accident which occurred on August 18, 2009, where petitioner – who was ultimately determined to have a blood alcohol level of .197%, more than twice the legal limit – failed to maintain control of her vehicle, crossed over the center line of the road into oncoming traffic and crashed into a vehicle containing a woman and three young children, which vehicle then collided with a third vehicle containing only the driver. All five individuals were injured and required medical treatment. The most seriously injured were A.Y. – a three year old child – who was hospitalized for 24 days as a consequence of his injuries and his mother – the driver of the car initially struck by petitioner – who was hospitalized for 4 days. By letter dated August 17, 2010, the Department’s Office of Criminal History Review advised petitioner that – as a result of her conviction – she was permanently disqualified from school employment pursuant to *N.J.S.A. 18A:6-7.1*.

*N.J.S.A. 18A:6-7.1, et. seq.*, in pertinent part, provides

An individual...**shall be permanently disqualified from employment or service under this act if the individual’s criminal history record check reveals a record of conviction for** any crime of the first or second degree or

c. (1) **A crime involving the use of force or the threat of force to or upon a person or property**, including, but not limited to, robbery, aggravated assault, stalking, kidnapping, arson, manslaughter and murder...(emphasis added)

The Commissioner is in full accord with the ALJ’s legal analysis of this statutory provision vis a vis the circumstances existing in this case:

The disqualification statute enumerates a series of crimes representative of those the Legislature determined involved the use of force or threat of force that are automatic disqualifiers – robbery, aggravated assault, stalking, kidnapping, arson, manslaughter and murder. This is not an exhaustive list pursuant to the Statute, and these crimes are a sampling of the type of serious crimes the Legislature contemplated should act as automatic disqualifiers. The majority of these crimes

are all acts in which the actor affirmatively directs or threatens force upon a specific person or property. However, at least two of these crimes, aggravated assault and manslaughter, can be committed with the mens rea of recklessness, not requiring an affirmative direction of force or a specific intent to injure. A person is guilty of assault by auto in the third degree [*N.J.S.A.* 2C:12-1c(2)] when they drive a vehicle recklessly while in violation of *N.J.S.A.* 39:4-50, and cause serious bodily injury to another. A specific intent to injure, or the mens rea of intentional or knowing behavior, is not required.<sup>2</sup> In the same way, the mens rea of intentional or knowing behavior, is not required for a finding of guilt for aggravated assault [*N.J.S.A.* 2C:12-1b(1)] and manslaughter [*N.J.S.A.* 2C:11-4a(1)].<sup>3</sup> The facts in this record suggest that the type of reckless behavior committed by petitioner may form a connection between the act and injury that appears to be contemplated by *N.J.S.A.* 18A:6-7.1(c)(1) as evidenced by the words “use of force or the threat of force to or upon a person or property,” and by the choice of examples provided in the statute, especially the examples of aggravated assault and manslaughter.

Petitioner was convicted of a crime, the elements of which are driving recklessly while intoxicated, and in the course of so doing, causing serious bodily injury. A third degree crime of assault by auto involving drunk driving and a resulting serious injury can be deemed to be on the same level as the crimes enumerated as representative of those that are automatic disqualifiers. These crimes also clearly involve the use of force or threat of force. There is no indication in this case that the petitioner intended to use force or threat of force, but she did act recklessly in using force upon another person or property. (Initial Decision at 6-7)

The Commissioner’s determination here is not altered by petitioner’s continued exception reliance on *Parshelunis, supra*, where that petitioner – under what petitioner in the instant matter asserts is a similar factual pattern – was not disqualified from school employment. Rather, the

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<sup>2</sup> “[t]he intent element of assault by auto only requires a showing that the defendant caused serious bodily injury by driving the vehicle recklessly, which means defendant was aware that he or she was operating a vehicle in such a manner or under such circumstances as to create a substantial and unjustifiable risk of serious bodily injury to another. (Criminal Model Jury Charges, June 14, 2004).” (Respondent’s Reply Exceptions at 5)

<sup>3</sup> “[T]he elements of Aggravated Assault, in violation of *N.J.S.A.* 2C:12-1b(1), are: (1) that the defendant caused serious bodily injury to another; and (2) that the defendant acted **recklessly under the circumstances** acted purposely or knowingly or manifesting extreme indifference to the value of human life. (Criminal Model Jury Charges, May 16, 2005) (emphasis added).” (Respondent’s Reply Exceptions at 4)

“The elements for Aggravated Manslaughter, in violation of *N.J.S.A.* 2C:11-4a, are: (1) that the defendant caused the victim’s death, and; (2) that [t]he defendant **did so recklessly**, and; (3) that the defendant did so under circumstances manifesting extreme indifference to human life. (Criminal Model Jury Charges, March 22, 2004) (emphasis added)” (Respondent’s Reply Exceptions at 4-5)

Commissioner finds and concludes, as did the ALJ, that the operative facts of the *Parshelunis, supra*, matter are distinguishable from the instant case. Specifically,

[the petitioner in that matter] pled guilty to a fourth degree offense, rather than the third degree offense for which the petitioner herein pled guilty. The petitioner in *Parshelunis* [was involved in a one car accident causing] minor injury to his passenger's ankle, and his blood alcohol level was 0.186%. The petitioner herein caused serious bodily injury to a mother and her toddler, requiring both to be airlifted from the scene. The toddler suffered severe internal injuries, and spent twenty-four days in the hospital. The mother suffered fractures and lacerations, requiring a four day hospital stay. Three others were also injured and required medical treatment as a result of the accident. Two independent eye witnesses stated that petitioner caused the accident by crossing over the center line and into oncoming traffic. The accident occurred during the late afternoon of a weekday. Petitioner's blood alcohol level was 0.197%, nearly two-and-one-half times higher than the legal limit of .08%. (Initial Decision at 7)

The Commissioner is additionally compelled to clarify that to the extent *Parshelunis, supra*, might be read as inconsistent with the opinion in the within matter, it is specifically disavowed.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein. Petitioner's disqualification from school employment is hereby AFFIRMED.

IT IS SO ORDERED.<sup>4</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 1, 2011

Date of Mailing: September 6, 2011

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<sup>4</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).