

#409-15 (OAL Decision: Not yet available online)

EDWARD ECKER, :
PETITIONER, :
v. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT : DECISION
OF EDUCATION, CRIMINAL :
HISTORY REVIEW UNIT, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the determination of the New Jersey State Department of Education (Department), Criminal History Review Unit disqualifying him from working on a school construction project based upon a criminal history review. Petitioner was notified in March 2015 that a fingerprint search had revealed a criminal conviction permanently disqualifying him from employment with any educational institution under the supervision of the Department. Pursuant to *N.J.S.A. 18A:6-7.1*, public schools may not employ an individual in any position which involves regular contact with students if he or she has been found to have a disqualifying criminal conviction. Petitioner herein did not challenge the accuracy of his criminal record, but asserted that he should not be disqualified because his employment would not involve regular contact with pupils.

The ALJ found, *inter alia*, that: petitioner has been employed for 23 years by a construction company that primarily does public construction projects, including numerous school projects; petitioner is a job-site construction superintendent, and has managed many projects at public schools during his career; a criminal history check revealed that petitioner was arrested in 1989 and pled guilty to an offense involving a “controlled dangerous substance,” for which he was sentenced to two years of probation; as a result, petitioner was disqualified from serving as the job-site superintendent on one of his company’s school construction projects; petitioner, however, would not have had any contact with pupils and there are safeguards to insure that contact with students would not occur; as a result of his disqualification, petitioner has been assigned temporary alternate work by his employer, but because 80% of the company’s work is school construction, he will be laid off if he remains disqualified; the record contains no evidence that petitioner would have access to or contact with students in his role as job-site superintendent; to the contrary, the record indicates the opposite to be true. Accordingly, the ALJ concluded that petitioner should not be disqualified from employment on the school construction project in question, and ordered that the Department’s determination disqualifying him from employment be reversed.

The Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision as the final decision in this matter.

<p>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.</p>

December 18, 2015

OAL DKT. NO. EDU 07832-15
AGENCY DKT. NO. 95-4/15

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the New Jersey State Department of Education, Criminal History Review Unit (CHRU).¹

In its exceptions, the CHRU does not dispute the factual findings of the Administrative Law Judge (ALJ), but instead cautions that a final decision in this matter should be applied only to the specific facts of this case. Furthermore, the CHRU suggests that moving forward, local districts are in the best position to make the initial determination of whether contractors are likely to have contact with students during the course of their jobs.

Upon a comprehensive review of the record in this matter, the Commissioner agrees with the ALJ that – as petitioner’s current construction project will take place in a fenced-off construction site or in the school only when school is not in session – petitioner will not have regular contact with pupils. Thus, for the reasons thoroughly set forth in the ALJ’s decision, petitioner should not be disqualified from working on his current construction project pursuant to

¹ The Commissioner was not provided with a transcript of the September 28, 2015 hearing at the OAL.

N.J.S.A. 18A:6-7.1, despite that the CHRU's fingerprint search revealed that petitioner has a criminal conviction in a 1989 drug-related offense. The Commissioner agrees with the CHRU that this final decision is only applicable to the specific facts of this case.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 18, 2015

Date of Mailing: December 18, 2015

² 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).