

IN THAT MATTER OF THE :
DISQUALIFICATION FROM : COMMISSIONER OF EDUCATION
SCHOOL EMPLOYMENT OF J.G. : DECISION
_____:

SYNOPSIS

Following appeal of the Department's disqualification of J.G., custodian convicted of second degree murder in 1966, matter of disqualification was transmitted to OAL for hearing.

In light of the documents in evidence and the testimony of witnesses, the ALJ concluded that J.G. affirmatively demonstrated rehabilitation.

Commissioner reversed ALJ's decision, holding that balancing of all factors required for consideration did not permit Commissioner to conclude, on existing record, that J.G. had clearly and convincingly demonstrated rehabilitation within the intentment of the criminal history record check law set forth at *N.J.S.A. 18A:6-7.1 et seq.*

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon careful and independent review of the record in this matter, the Commissioner is compelled to reach a different conclusion from that of the ALJ. In weighing the factors to be considered in the analysis of rehabilitation, the Commissioner initially concurs with the ALJ that the nature of the position of custodian, which allows for significant potential unsupervised contact with children, and the nature and seriousness of the offense of second degree murder, militate against a finding that petitioner should be qualified for employment in the schools of the State.

The Commissioner does not agree, however, that the remaining six factors weigh sufficiently in petitioners' favor to overcome this consideration. While the Commissioner recognizes that petitioner was found credible in his account of the circumstances of his offense, wherein he denies any role in the killing which occurred, such account does not, on its face, appear consonant with a conviction for second degree murder under the then-existing statute, *N.J.S.A. 2A:113-1 et seq.*, and no explanation for the apparent anomaly has been brought to the

record. Additionally, while petitioner's offense was an isolated one occurring over thirty years ago, it occurred at an age (22) when he was sufficiently mature to recognize the nature and consequences of actions such as he was found to have committed, and the record is devoid of any evidence whatsoever that social conditions contributed to these actions. Thus, while petitioner has indeed submitted, as found by the ALJ, strong evidence of rehabilitation in his showing on the eighth and final factor, a balancing of *all* factors required will simply not permit the Commissioner to be clearly and convincingly persuaded, as he must be by law, that petitioner is qualified for school employment notwithstanding his disqualifying conviction. In this regard, the Commissioner underscores the daunting responsibility he holds in judging whether persons who have been convicted of extremely violent offenses should be able to work in the school environment, notwithstanding their history.

Accordingly, the initial decision of the ALJ is reversed for the reasons herein expressed. Petitioner is found not to have demonstrated rehabilitation in accordance with the requirements of *N.J.S.A. 18A:6-7.1*, and, therefore, remains disqualified from employment as a school custodian.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

February 27, 1998