

NICHOLAS ARMINIO, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT OF : DECISION
EDUCATION, STATE BOARD OF
EXAMINERS, :
RESPONDENT. :

SYNOPSIS

Petitioner sought reinstatement of his teaching certificate, which the Board of Examiners revoked after it determined he had voluntarily surrendered it when he entered the PTI program several years earlier after charges of sexual misconduct with students were filed against him. In addition to asserting that he was rehabilitated, petitioner argued that, upon entry into PTI for a second time after withdrawing from the program prior to completion, he did not again agree to surrender his certificate and thus, that it should be reinstated because it was not properly surrendered or revoked. The Board argued that, based on petitioner's voluntarily surrender of his certificate, the fact that he lied when obtaining a certificate in Maryland by stating that he never surrendered his teaching certificate or surrendered a teaching position because of misconduct with students, and considering the testimony presented from former students confirming petitioner's inappropriate sexual misconduct with students, his application for reinstatement of his certificate should be denied.

The ALJ, based on the testimony and evidence presented, determined that petitioner had in fact surrendered his certificate when he entered PTI for the second time, was untruthful when completing his application for certification in Maryland and had engaged in inappropriate behavior of a sexual nature with former students, whose testimony the ALJ determined was credible. The ALJ found that petitioner's testimony was not credible and that he had failed to demonstrate rehabilitation that would warrant reinstatement of his certification. The ALJ ordered his application for recertification dismissed with prejudice.

The Commissioner affirmed the decision of the ALJ for the reasons set forth therein. In so doing, the Commissioner accepted the ALJ's credibility determinations and agreed that, based on petitioner's conduct with students, his untruthfulness when seeking certification in Maryland and failure to admit wrongdoing and demonstrate rehabilitation, petitioner's application for reinstatement of his certification must be denied.

November 5, 2001

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.

OAL DKT. NO. EDU 10090-99
AGENCY DKT. NO. 314-10/99

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The record and Initial Decision issued by the Office of Administrative Law have been reviewed. Petitioner's exceptions and reply exceptions submitted by the New Jersey State Board of Examiners (Board) were timely filed pursuant to *N.J.A.C.* 1:1-18.4. In support of his exceptions, petitioner submitted transcripts of the five days of hearing in this matter, a copy of his Post Hearing Brief and his Reply to the Board's Post Hearing Brief.

PETITIONER'S EXCEPTIONS

Petitioner's exceptions urge reversal of the Administrative Law Judge's (ALJ) Initial Decision for the reasons summarized briefly below and aver that he has borne his burden to show by a preponderance of the competent and credible evidence that he has satisfied the standards for certification after revocation articulated in *N.J.A.C.* 6:11-3.6(g) and *N.J.S.A.* 2A:168A-2.

In Exception I, petitioner avers that the ALJ completely failed, even indirectly, to consider or comment on any evidence of rehabilitation proffered on behalf of petitioner in contravention of the prescriptions of *N.J.A.C.* 6:11-3.6(g) and *N.J.S.A.* 2A:168A-2, notwithstanding relevant testimony summarized in his Post Hearing Brief and many exhibits

submitted to the record with regard to the issue of rehabilitation. (Petitioner’s Exceptions at 3-4) Petitioner further avers that the ALJ ignored all of the documented inconsistencies and misrepresentations in the testimony of T.T. and S.H., and, although the ALJ acknowledged the “somewhat confusing” testimony of T.T., both of these witnesses were found to be credible by the ALJ. (*Id.* at 4) In addition, petitioner argues that the ALJ, in part, failed to consider the significance of any of the decisions cited in Point V of petitioner’s Post Hearing Brief which dealt with situations wherein individuals were granted license as teachers in New Jersey notwithstanding criminal convictions for such things as spousal assault, drug-related and prostitution offenses because of evidence presented regarding their rehabilitation.¹ (*Ibid.*) In summary, petitioner avers:

It is submitted that the testimony and exhibits presented by the Petitioner regarding the issue of rehabilitation clearly established by the overwhelming preponderance of the credible evidence that [he] was entitled to Certification after Revocation. The evidence presented regarding Petitioner’s extraordinary career in Maryland teaching and coaching underprivileged students and his consistent commitment to do everything he could to open up College opportunities to students who never would have considered that option was ignored without comment by the [ALJ]! [Petitioner’s] selflessness in working seven days a week in two jobs for a four year period of time in order that his wife could fulfill her dream of becoming an educator was likewise ignored by the [ALJ]!

In fact, none of the rehabilitative criteria referred to in the [Board’s] Application for Certification after Revocation decision dated July 9, 1999 were reviewed in the [ALJ’s] Initial Decision that appears to have been written without a review of the transcripts in this matter and without consideration of the Petitioner’s Post Hearing Brief and reply letter memorandum.*** (*Id.* at 5)

Petitioner’s Exception II avers that the ALJ ignored all of the credible evidence in this proceeding establishing that the petitioner did not voluntarily surrender his teaching

¹ The cases petitioner cites in his Post Hearing Brief are *Golinski v. New Jersey Department of Education*, 91 N.J.A.R.2d (EDU) 36; *State of New Jersey, Department of Education v. Gail Skwarek*, 92 N.J.A.R.2d (EDU) 1; and *Saunders v. New Jersey Department of Education*, 91 N.J.A.R.2d (EDU) 12.

certificate as a condition for reenrollment into PTI. In support of this contention, petitioner urges consideration of the Statement of Facts advanced in his Post Hearing Brief and Points III and IV of his legal arguments in support of this exception. (*Id.* at 6) More specifically, petitioner argues that the relevant documentary evidence, including Charles Moriarty's testimony, clearly and unequivocally established that petitioner never agreed to surrender his teaching certificate as a condition for reentering PTI, nor did he misrepresent the facts regarding revocation of his certificate as being without warning. (*Ibid.*) Petitioner further maintains that Moriarty acknowledged petitioner's consistent refusal to agree to surrender his teaching certificate when presented with documents that Moriarty drafted (Exhibits P-13, P-14, P-16 and P-17) and when Moriarty testified (see Tr. 6/7/01 at 95-99). (*Id.* at 6-7) Moreover, petitioner argues that while the ALJ repeatedly referred to a July 7, 1992 letter that petitioner initially signed when he first entered PTI (Exhibit R-1) as conclusive proof that petitioner had relinquished his teaching license, the ALJ did not acknowledge that petitioner's decision in July 1993 to withdraw from the PTI program before its completion rendered any previously proffered letter surrendering his certificate a nullity, as again acknowledged by Moriarty during the course of his testimony. (*Id.* at 7)

Petitioner's Exception III argues that the ALJ ignored numerous inconsistencies in the testimony of T.T. and S.H. in concluding that they were credible witnesses, again referencing in support the proposed Statement of Facts set forth in his Post Hearing Brief and Point II of the Legal Argument section with respect to his assertions that their testimony was completely incredible. (*Ibid.*)

In Exception IV, petitioner asserts that the ALJ's conclusion that he falsely completed an application for a teaching certificate on July 22, 1995 in Maryland ignored the evidence presented in this matter. (*Id.* at 8-9) As to this, petitioner avers that the facts

summarized in his Post Hearing Brief and legal arguments contained therein establish that he did not voluntarily surrender his teaching certificate upon reenrollment in PTI. (*Id.* at 8) Petitioner further argues that as of July 1995 his teaching certificate had neither been revoked nor suspended, nor had he ever resigned or been dismissed from his employment within the Toms River School District after notice of allegations of misconduct involving a student, since he was paid for the entirety of the 1991-1992 school year and never proffered a letter of resignation thereafter. (*Ibid.*)

In closing, petitioner avers that there was not a scintilla of credible evidence to support the ALJ's conclusion that petitioner had misrepresented the facts in completing an application for certification in Maryland and that "[i]n this regard it should be noted that not even the State Board of Examiners maintained that there were any falsifications in [his] application for teaching certification in Maryland." (*Id.* at 9)

BOARD'S REPLY EXCEPTIONS

The Board's reply exceptions aver that the ALJ correctly determined that petitioner did not meet the regulatory requirements for recertification after revocation, and contrary to petitioner's allegations, the ALJ's conclusions are supported by the evidence introduced in this proceeding. Initially, the Board recites *N.J.A.C. 6:11-3.6(g)* which provides that "[w]here an applicant for certification indicates that he or she previously held a certificate *** which certificate was revoked [by it], the Board of Examiners may require the applicant to set forth the pertinent circumstances relating to the revocation, and require the applicant to demonstrate to [it] rehabilitation which warrants reinstatement of the revoked certificate." (Board's Reply Exceptions at 1-2) The Board then restates that its decision to revoke petitioner's certificate was based on the fact the Ocean County Prosecutor's Office required petitioner to surrender his teaching certificate as a result of his entry into PTI; therefore, pursuant

to *N.J.A.C.* 6:11-3.6(g), petitioner was required to provide information concerning the pertinent circumstances that led the prosecutor's office to demand the certificate's surrender. (*Id.* at 2) With respect to this, the Board maintains that the ALJ, who had the benefit of sitting through five days of testimony, correctly found incredible petitioner's denials of any wrongdoing with reference to the allegations of former students. (*Ibid.*) The Board further avers that, based upon the credible evidence, amply supported in the record, the [ALJ] correctly "concluded that 'years after the petitioner's misconduct, the student victims (now young women) testified credibly about the acts on which the charges were based.' (Initial Decision, 26). ***As [the ALJ] noted, the incidents occurred over ten years ago and therefore certain details were understandably not recalled by the students. However, the students did testify credibly concerning the underlying allegations. Further, [the ALJ] found that 'petitioner's contention that he merely touched one student at the collarbone is not credible.' *Id.*" (Board's Reply Exceptions at 2-3)

The Board next argues that, having found petitioner's denials of wrongdoing incredible, the ALJ correctly determined that petitioner did not meet his burden to demonstrate rehabilitation pursuant to regulations, avowing that he "has not even taken the first step towards rehabilitation, which is acceptance that he did something wrong. He takes no responsibility for his actions, but rather resorts to blaming everyone else, including the students, his former attorney and even the [Board] for failing to notify him about his certificate revocation." (*Id.* at 3)

The Board further states that, contrary to petitioner's assertion that the ALJ somehow overlooked petitioner's submissions in support of his claims of rehabilitation, the ALJ did address a number of petitioner's profferings of rehabilitation, *e.g.*, the ALJ "noted that petitioner encouraged his Baltimore Eastern Technical High Scholl football players to prepare for careers after high school and 'he arranged appropriate college scholarships for some who would not otherwise have had such opportunities.'" (Initial Decision, 15, 17); the ALJ also noted

petitioner's wife "testified that petitioner made sacrifices for his family 'especially from 1995 to 1999 when she was completing her undergraduate degree in Baltimore.' (Initial Decision, 19)"; and the ALJ addressed the testimony of petitioner's character witnesses and noted that there were a number of letters of recommendation submitted by petitioner from his friends and colleagues. (*Id.* at 3-4) As to this, the Board avows that, notwithstanding petitioner's activities and the recommendations he proffers in the record, petitioner presented no evidence that demonstrated rehabilitation. The Board reiterates its belief that petitioner was not forthcoming with the events underlying his indictment and participation in PTI and emphasizes again that petitioner has refused to accept responsibility for his actions and has not sought counseling. (*Id.* at 4)

The Board also avers that petitioner's reliance on *Golinski, supra*; *Skwarek, supra*; and *Saunders, supra*, is misplaced because, *inter alia*, in all three cases the individual's conduct occurred outside of school and did not involve students. (*Id.* at 6) As to this, the Board argues:

In all three cases, the teachers were able to provide witnesses or reports that documented the progress and steps that the teacher took to change their behavior. Petitioner here has not admitted to any wrongdoing and has not presented any evidence that shows any steps he took to overcome his propensity to engage in inappropriate conduct with female students. Therefore, it is evident that [the ALJ] did not fail to properly consider these cases since they are completely inapplicable to the present matter. (*Ibid.*)

Additionally, the Board avers that not only was petitioner's testimony concerning his conduct with students unbelievable, the ALJ was correct in concluding that petitioner's claim that he did not agree to surrender his certificate as part of his entry into PTI in 1994 was incredible. Of this, the Board argues that:

Although petitioner did not want to initially surrender his certificate when he withdrew from the PTI program in 1993, after the return of the indictment in May 1994, petitioner was presented with the greater risk that he would be facing a prison sentence.

The indictment returned included counts for second degree official misconduct as well as counts for fourth degree criminal sexual contact which petitioner was previously charged with. (Ex. P-12). With a second degree offense, as Charles [Moriarty], petitioner's former attorney stated, there is a presumptive term of seven years in jail. (6/7/01 at 38:3-6). Although petitioner wanted to hold on to his teaching certificate, after May 1994 he had to consider very different circumstances than he did when he withdrew from the PTI program in June 1993. Charles [Moriarty] testified that "at some point the decision was made to try to get back into PTI....and surrender his license." (6/7/01, 40:3-4, 16-17). Further, William Cunningham and Steven Janosko, Ocean County Prosecutors, testified that petitioner was required to surrender his certificate as part of his re-entry into PTI in 1994 and Steven Janosko's October 1994 letter to Judge Giovine set forth the terms of petitioner's participation in PTI which required petitioner to surrender his certificate. Petitioner admitted he gave a copy of his teaching certificate to Charles [Moriarty] in 1994. Therefore, contrary to petitioner's claims, the record amply supports [the ALJ's] conclusion that petitioner knew he was required to surrender his teaching certificate as part of his participation in PTI in 1994. (*Id.* at 7-8)

In response to petitioner's exception relative to not falsifying portions of his certification application in Maryland with respect to the surrender/revocation of his New Jersey certificate, the Board states, *inter alia*, that:

Petitioner's claims that he did not falsify information in the application are disingenuous. Petitioner did agree to surrender his certificate when he entered the PTI program in 1992 as well as when he re-entered the program in 1994. One of the questions on the Maryland form asked if the applicant had ever had a certificate revoked, suspended or voluntarily surrendered. (Ex. RC-41). Even assuming, *arguendo*, that petitioner really did not believe he had surrendered his certificate in 1994, the question does not limit the time frame by asking something such as "is your certificate presently revoked" or "has it been revoked in the past two years", but rather it says *ever*. Petitioner testified that he surrendered his certificate in 1992 (1/26/01, 220:1-3), and as the evidence demonstrated, he was required to surrender his certificate again in 1994. Thus the truthful answer on the Maryland application would be yes to the question of whether he had ever surrendered his teaching certificate. (emphasis in text) (*Id.* at 8-9)

Lastly, the Board contends the ALJ did not err in finding that petitioner falsified the Maryland application when he denied he had ever resigned or been dismissed after notice of allegations of misconduct involving a student. (*Id.* at 9) In support of the ALJ's determination, the Board points to petitioner's March 20, 1999 letter to the Board wherein "petitioner states '[i]n June 1992, I resigned my position as Teacher of Physical Education and Health with the Toms River Board of Education.' (Ex. R-A28)." Further, an April 19, 1993 letter to the Board from the Ocean County Superintendent notes that petitioner resigned his position with the district. (Ex. R-C27) and, petitioner, when asked during the proceedings in this matter if he resigned his teaching position, testified that he had. (Tr. 1/26/01 at 220:11-21) (*Id.* at 9-10)

COMMISSIONER'S DETERMINATION

Upon a comprehensive and independent review of the record in this matter, including exhibits, post hearing briefs and replies, exceptions and reply exceptions, and the transcripts of the five days of proceedings, the Commissioner agrees with and adopts as his own the ALJ's recommended decision dismissing the Petition of Appeal for the reasons set forth in the Initial Decision.² In the process of examining the record, the Commissioner gave careful consideration to petitioner's exceptions but does not find a basis in either the transcripts or the record as a whole to overturn the ALJ's credibility determinations in this matter. In this regard, the Commissioner is satisfied that the ALJ carefully measured and gave due weight to conflicts, inconsistencies, and potential biases in deciding which testimony and evidentiary documentation to credit in reaching his findings of fact and credibility determinations. *See In the Matter of the Tenure Hearing of Frank Roberts, School District of the City of Trenton, Mercer County, 94*

² The Commissioner notes that the ALJ reviewed this matter under a preponderance of credible evidence standard rather than the standard of arbitrary, capricious and unreasonable. However, since petitioner was not prejudiced by the standard of review applied and respondent filed no exceptions to it, the Commissioner need not address this question. (*But see David C. Williams v. State Board of Examiners, 95 N.J.A.R.2d (EDU) 58; Columbus Salley v. New Jersey State Board of Examiners, 97 N.J.A.R.2d (EDU) 257; Edward J. Flaherty v. New Jersey State Board of Examiners, decided by the Commissioner June 30, 1999.*)

N.J.A.R.2d (EDU) 284, 294, *aff'd* 95 *N.J.A.R.2d* (EDU) 349, *aff'd* Appellate Division 96 *N.J.A.R.2d* (EDU) 549.

It is well-established that the ALJ's credibility determinations are entitled to the Commissioner's deference because the ALJ, "as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses, and, consequently, is better qualified to judge their credibility. *In the Matter of the Tenure Hearing of Tyler*, 236 *N.J. Super.* 478, 485 (App. Div. [1989]), *certif. denied*, 121 *N.J.* 615 [1990]." *In the Matter of the Tenure Hearing of Frank Roberts*, *supra*, at 550. This is not to say, however, that the Commissioner is *bound* by the ALJ's assessment of the testimony. As held by the State Board of Education, although there is an "obligation to accord due consideration to the fact that the Administrative Law Judge had the opportunity to observe [the] witnesses, *see Quinlan v. Board of Education of North Bergen Township*, 73 *N.J. Super.* 42, 50-54 (App. Div. 1962), we are not bound by the ALJ's assessments of the substance of the testimony or [the ALJ's] evaluation of the factors bearing upon credibility." *In the Matter of the Tenure Hearing of Hugo Vicari, Hudson County Vocational-Technical School District*, decided by the State Board July 1, 1998, slip opinion at 7. Moreover, recently enacted legislation, *N.J.S.A.* 52:14B-10(c), mandates that "[t]he 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."³ Additionally,

[T]he sufficiency of evidence "must take into account whatever in the record fairly detracts from its weight"; the test is not for the courts "to read only one side of the case and, if they find any evidence there, the administrative action is to be sustained and the

³ Although this statutory provision is not strictly applicable because the instant matter was filed prior to July 1, 2001, the effective date of the law, it provides guidance on the issue of agency review of administrative law judge credibility determinations and it is consistent with both case law and the legislative intent of the Administrative Procedure Act.

record to the contrary to be ignored.” (citation omitted)
St. Vincent’s Hospital v. Finley, 154 N.J. Super. 24, 31 (App. Div.
1977).

In the instant matter, however, the Commissioner determines, contrary to petitioner’s assertions, that the findings of fact adduced by the ALJ had sufficient basis in the record. The testimony and evidence is fairly summarized by the ALJ with explanation of how he weighed the proofs before him and why he credited, or discredited, certain testimony.

Accordingly, for the reasons set forth in the Initial Decision and herein, the State Board of Examiners denial of petitioner’s Application for Recertification upon Revocation is affirmed and the matter hereby dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: November 5, 2001

Date of Mailing: November 5, 2001

⁴ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.