

New Jersey Commissioner of Education
Final Decision

Alvin Herron,

Petitioner,

v.

New Jersey Department of Education, State Board of
Examiners,

Respondent.

Synopsis

Pro-se petitioner appealed the determination of the respondent New Jersey State Board of Examiners (SBE) that he had not met the requirements for issuance of a standard administrative certificate with a supervisor endorsement pursuant to *N.J.A.C. 6A:9B-12.6(a)(3)*. Petitioner holds a standard certificate with a military science endorsement issued pursuant to *N.J.A.C. 6A:9B-11.8*. On March 4, 2022, the Board denied petitioner’s application for a standard supervisor certificate. Petitioner filed this appeal on June 28, 2022, after which the SBE filed a motion for summary decision in lieu of an answer.

The ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; the SBE rejected petitioner’s application for a standard supervisor certificate after denying his request to substitute his military science endorsement and teaching experience completed under that endorsement for his licensure deficiencies under *N.J.A.C. 6A:9B-12.6(a)(3)*; in so doing, the SBE cited *N.J.A.C. 6A:9B-11.8(c)*, which states that holders of a military science endorsement may not to use it as the basis for obtaining additional endorsements. The ALJ concluded that the petitioner failed to establish, by a preponderance of evidence, that he currently satisfies the requirements for issuance of a standard administrative certificate with a supervisor endorsement, set forth at *N.J.A.C. 6A:9B-12.6(a)(3)*. Accordingly, the ALJ granted summary decision to the respondent and dismissed petitioner’s appeal.

Upon review, the Commissioner concurred with the ALJ that petitioner failed to establish that he currently satisfies the requirements for issuance of the standard administrative certificate with a supervisor endorsement. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter and the petition was dismissed.

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.

304-23

OAL Dkt. No. EDU 05966-22

Agency Dkt. No. 162-6/22

New Jersey Commissioner of Education

Final Decision

Alvin Herron,

Petitioner,

v.

New Jersey Department of Education, State Board
of Examiners,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner adopts the Initial Decision as the Final Decision in this matter. The Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner has failed to establish, by a preponderance of evidence, that he currently satisfies the requirements for issuance of a standard administrative certificate with a supervisor endorsement, set forth at *N.J.A.C. 6A:9B-12.6(a)(3)*.

Petitioner holds a standard certificate with a military science endorsement issued pursuant to *N.J.A.C. 6A:9B-11.8*. In connection with his application for a standard administrative certificate with a supervisor endorsement, he sought to rely upon teaching experience completed under his military science endorsement. However, *N.J.A.C. 6A:9B-11.8(c)* states that holders of the military science endorsement “shall not use it as the basis for obtaining additional endorsements” and must instead “obtain additional endorsements by meeting applicable requirements outlined in [Chapter 9B].” Citing *N.J.A.C. 6A:9B-11.8(c)*, respondent denied petitioner’s application for issuance of a standard

administrative certificate with a supervisor endorsement. *In the Matter of the Application of Alvin Herron*, State Board of Examiners Decision, at 1 (March 4, 2022).

The Commissioner has previously held that respondent is not at liberty to waive applicable regulatory requirements when deciding whether to issue certificates and endorsements. *Hutchinson v. New Jersey State Board of Examiners*, OAL Dkt. No EDU 16373-12, Initial Decision (April 5, 2013), *adopted*, Commissioner Decision No. 177-13 (May 15, 2013). Because petitioner has not satisfied the regulatory requirements for issuance of a standard administrative certificate with a supervisor endorsement, set forth at *N.J.A.C. 6A:9B-12.6(a)(3)*, the Commissioner holds that respondent's denial of petitioner's application was reasonable and appropriate.

Accordingly, respondent's motion for summary decision is granted, and the petition of appeal is hereby dismissed.¹

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 13, 2023
Date of Mailing: October 18, 2023

¹ Moreover, the Commissioner finds that the instant petition was untimely filed and is subject to dismissal on that basis alone. Pursuant to *N.J.A.C. 6A:3-1.3(i)*, petitions must be filed "no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action." The State Board of Examiners' decision from which petitioner sought relief was emailed to him on March 4, 2022. He filed his petition on June 28, 2022—116 days after he was served with the decision at issue. The record does not contain any basis upon which to conclude that a failure to relax the ninety-day deadline would be inappropriate or result in an injustice.

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
GRANTING MOTION FOR
SUMMARY DECISION

OAL DKT. NO. EDU 05966-22

AGENCY DKT. NO. 162-6/22

ALVIN HERRON,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF
EDUCATION, BOARD OF EXAMINERS,**

Respondent.

Alvin R. Herron, petitioner, pro se

David L. Kalisky, Deputy Attorney General, for respondent (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: December 28, 2022

Decided: September 8, 2023

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE

Petitioner, Alvin Herron, appealed the denial of his application for a Standard Supervisor Certificate (“SSC”), by respondent, the New Jersey Department of Education,

Board of Examiners (respondent or Board). Respondent's Answer to petitioner's appeal contained a motion to dismiss, which is treated herein as a motion for summary decision.

PROCEDURAL HISTORY

On March 4, 2022, the Board issued its decision denying petitioner's application for an SSC. Petitioner filed an appeal on June 28, 2022, which was transmitted to the Office of Administrative Law (OAL) and filed on July 20, 2022, as a contested case. N.J.S.A. 52:14B-1 to N.J.S.A. 52:14B-15; N.J.S.A. 52:14F-1 to N.J.S.A. 52:14F-13.

In lieu of an Answer, respondent filed the within motion for summary decision with accompanying brief, on or about July 18, 2022. Petitioner filed a brief on December 13, 2022, and respondent submitted a reply brief on December 28, 2022.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Based upon the parties' moving papers and briefs, and for the purpose of deciding this motion for summary decision, I **FIND** the following:

1. Petitioner teaches in New Jersey under an instructional certificate with a military science endorsement, and does not hold a standard New Jersey instructional or educational services certificate, or its out-of-state equivalent. His teaching experiences at the Department of Corrections and the Juvenile Justice Commission were completed under petitioner's military science endorsement. He sought an SSC in order to become a supervisor of Correctional Educational Services.

LEGAL ANALYSIS AND CONCLUSION OF LAW

The issue is whether the Board is entitled to a summary decision in the within matter, or whether a full hearing should be held.

Summary decision may be granted when the papers and discovery that have been filed show that there is no genuine issue as to any material fact challenged and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). No evidentiary hearing needs to be held if there are no disputed issues of material fact. Frank v. Ivy Club, 120 N.J. 73, 98, cert. denied, 498 U.S. 1073 (1991). “When the evidence is so one-sided that one party must prevail as a matter of law, the [tribunal] should not hesitate to grant summary [decision].” Della Vella v. Bureau of Homeowner Protection, OAL Dkt. No. CAF 17020-13, 2014 WL 1383908 (N.J. Adm. 2014) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995)).

Further, the non-moving party has the burden “to make an affirmative demonstration . . . that the facts are not as the movant alleges.” Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App.Div. 1962). This requirement, however, does not relieve the moving party from having to initially establish in its moving papers that there was no genuine issue of fact and that they were entitled to prevail as a matter of law. It is the “movant’s burden to exclude any reasonable doubt as to the existence of any genuine issue of fact.” Conti v. Board of Education, 286 N.J. Super. 106 (App. Div. 1995) (quoting Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954)).

For an adverse party to a motion for summary decision to prevail they must, by responding affidavit, set forth specific facts showing that there was a genuine issue which could only be addressed in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

On March 4, 2022, the Board denied petitioner’s application for an SSC, by denying petitioner’s request to substitute his licensure deficiencies under N.J.A.C. 6A:9B-12.6(a)(3), with his military science endorsement and teaching experience that was completed under that endorsement, based on N.J.A.C. 6A:9B-11.8(c), which stated that holders of a military science endorsement were not to use it as the basis for obtaining additional endorsements.

In support of his appeal, petitioner requested that the Board accept his standard instructional certificate with a military science endorsement, as well as his teaching

experiences at the Department of Corrections and the Juvenile Justice Commission, which were completed under his military science endorsement, as experience equivalent to the requirements in N.J.A.C. 6A:9B-12.6(a)(3). In denying petitioner's application for an SSC, respondent advised petitioner that candidates for the SSC needed to "hold a standard New Jersey instructional or educational services certificate, or its out-of-state equivalent." N.J.A.C. 6A:9B-12.6(a)(3), and that petitioner did not meet that requirement. Additionally, respondent found that petitioner also failed to meet the requirement under N.J.A.C. 6A:9B-12.6(a)(3) that candidates "complete three years of successful, full-time teaching and/or educational services experience," because petitioner's teaching experience was not completed under an appropriate New Jersey certificate.

In his brief responding to respondent's motion, petitioner failed to argue that there were genuine issues of fact in dispute that required a full due process hearing, and failed to argue that respondent was not entitled to a summary decision in this matter. Petitioner provided no affidavit setting forth specific facts showing that there was a genuine issue which could only be addressed in an evidentiary proceeding, as required by N.J.A.C. 1:1-12.5(b).

There appears to be no factual questions in this case. Petitioner disagreed with respondent's interpretation of the law, which would make this case ripe for a summary decision motion.

In respondent's motion and briefs, they correctly argued that it was reasonable for the Board to deny petitioner's application for an SSC because he failed to meet those aforementioned regulatory requirements under N.J.A.C. 6A:9B-12.6(a)(3). It is true, however, that an applicant who is deficient in the certification requirements may provide the Board with evidence of "alternative education and/or experience that the applicant believes is equivalent to the areas of deficiency." N.J.A.C. 6A:9B-4.12(b). Respondent submitted that while the Board did not waive requirements for certification, under N.J.A.C. 6A:9B-4.12(b) the Board is given the discretionary authority to accept alternate education and/or experience if it is equivalent to the requirement.

Yet respondent is also correct in asserting that the burden would be on the applicant to present, by a preponderance of the evidence, such information necessary to establish the “one-to-one correspondence” of alternate education or experience to the regulatory requirements that were deemed deficient. See Hutchinson v. N.J. Dept. of Educ., State Bd. Of Exam’rs, EDU 16373-12, Initial Decision (Apr. 5, 2013), adopted, (May 15, 2013); McQuilken v. N.J. St. Bd. of Exam’rs, OAL Dkt. No. EDU 8375-11, Initial Decision (Dec. 13, 2011), <http://njlaw.rutgers.edu/collections/oal>, adopted Comm’r (January 27, 2012) (citing Farrar v. St. Bd. of Exam’rs, OAL Dkt. No. EDU 13768-08, Initial Decision (Sept. 9, 2009), adopted, Comm’r (July 26, 2010), <http://njlaw.rutgers.edu/collections/oal/>).

Petitioner failed to meet his burden of proving that he had sufficient alternate education or experience to substitute for the necessary certification. Petitioner asked the respondent to consider his military science endorsement and his professional teaching experience, namely his teaching experiences at the Department of Corrections and the Juvenile Justice Commission, as substitutes for the requirements of N.J.A.C. 6A:9B-12.6(a)(3). But the Board found that petitioner’s teaching experiences at the Department of Corrections and the Juvenile Justice Commission were completed under his military science endorsement and concluded that N.J.A.C. 6A:9B-11.8(c) prohibited holders of the military science endorsement from “us[ing] it as the basis for obtaining additional endorsements.” As a result, the Board held that it was “constrained from accepting [petitioner’s] military science endorsement in order to meet the requirements for certification as a supervisor” set out in N.J.A.C. 6A:9B-12.6(a)(3).

N.J.A.C. 6A:9B-12.6(a)(3) requires that all applicants for the SSC must “[h]old a standard New Jersey instructional or educational services certificate, or its out-of-State equivalent, and complete three years of successful, full-time teaching and/or educational services experience.” N.J.A.C. 6A:9B-12.6(a)(3) also requires that any applicant who has completed three years of full-time teaching experience in New Jersey must also be able to demonstrate that their experience was completed “under an appropriate New Jersey certificate.” Petitioner failed to prove that he met the “appropriate New Jersey certificate” requirement; his teaching experience took place pursuant to a military science endorsement, and N.J.A.C. 6A:9B-11.8(c) prohibited holders of the military science

endorsement from using that endorsement as the basis for obtaining further endorsements. The Board argued that it had no discretion or authority to waive the requirements of N.J.A.C. 6A:9B-12.6(a)(3), and petitioner failed to argue or prove that respondent had such authority.

Petitioner offered no additional information or facts in dispute which might be considered by respondent, and failed to argue that there were any genuine issues in dispute for which a full due process hearing was warranted. Petitioner, as the non-moving party, had the burden to make an affirmative demonstration that the facts were not as the movant alleges, per Spiotta, 72 N.J. Super. at 581, but petitioner failed to do so.

I **CONCLUDE** that petitioner did not comply with the requirements of N.J.A.C. 6A:9B-12.6(a)(3) that all applicants for the SSC must hold a standard New Jersey instructional or educational services certificate, or its out-of-State equivalent, and complete three years of successful, full-time teaching and/or educational services experience under an appropriate New Jersey certificate.

Rather than argue the merits of respondent's motion for summary decision, petitioner's argument was that respondent's reliance on N.J.A.C. 6A:9B-11.8(c) violated the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq. ("USERRA"). 38 U.S.C. § 4311(a) states:

[a] person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

However, petitioner was not denied a promotion because he was in the military. He was denied a certificate which would have allowed a promotion because he chose to teach pursuant to a military endorsement. Petitioner's military background in no way

precluded him from complying with the standards set forth for obtaining an SSC. Petitioner could have taken steps to obtain a standard New Jersey instructional or educational services certificate, or its out-of-state equivalent, but instead hoped to use his military endorsement as the means for circumventing the regulatory requirements for procuring an SSC.

I **FIND** that respondent did not deny petitioner's application for an SSC due to his military service, and further **FIND** that petitioner failed to prove that USERRA was violated in the within matter. In that USERRA had not been violated by respondent, petitioner's argument that USERRA superseded New Jersey law was moot.

Similarly, because respondent did not deny petitioner's application for an SSC due to his military service, petitioner's arguments that respondent violated the New Jersey Law Against Discrimination (LAD) and N.J.S.A. 10:5-12(a) were moot. Regardless, whether a New Jersey regulation or statute is violative of another New Jersey regulation or statute, or violative of a Federal regulation or statute, is not a matter properly before this court; a challenge to New Jersey law must be filed in the Appellate Division.

Accordingly, I **FIND** that there are no genuine issues of fact which would require a full due process evidentiary hearing and **CONCLUDE** that this matter is ripe for a summary decision. I **CONCLUDE** that the respondent's motion for summary decision is **GRANTED**.

ORDER

I hereby **ORDER** that the respondent's motion for summary decision is **GRANTED** and the within appeal is **DISMISSED**.


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, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 8, 2023
DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JNR/jm

APPENDIX

BRIEFS

For petitioner

Brief, dated December 13, 2022

For respondent

Motion For Summary Decision with accompanying brief, dated July 18, 2022

Reply brief, dated December 28, 2022