

STATE BOARD OF EXAMINERS DOCKET NO. 1617-239  
AGENCY DOCKET NO. 13-1/18

IN THE MATTER OF THE CERTIFICATES                   :     COMMISSIONER OF EDUCATION  
OF JEAN ST. FORT.                                        :                                        DECISION

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Order of Suspension by the State Board of Examiners, December 8, 2017

For the Respondent-Appellant, William P. Hannan, Esq.

For the Petitioner-Respondent State Board of Examiners, Laurie Fichera, DAG  
(Gurbir S. Grewal, Attorney General of New Jersey)

Appellant challenges the determination of the New Jersey State Board of Examiners (Board) that his actions constituted unbecoming conduct, and warranted suspension of his teaching certificates – Teacher of Elementary School in Grades K-6 Certificate of Eligibility, Teacher of English as a Second Language Certificate of Eligibility, and Teacher of Elementary School in Grades K-6 Certificate – for a period of six months.

On appeal, appellant maintains that the Board’s decision to suspend his certificates is improper. Appellant argues that the Board erred in finding him guilty of unbecoming conduct without consideration of the “full context of the allegations.” Specifically, appellant argues that: he tried to “nullify” his mistake by withdrawing the inaccurate insurance claim; his conduct did not relate to his employment; he successfully completed the pre-trial intervention (PTI) program, and the charges against him were dismissed; and he has demonstrated a fitness to teach. Appellant submits that even if the Board’s finding of unbecoming conduct is upheld, suspension is “too harsh” of a penalty. Appellant requests that the suspension be rescinded, and that he be given no penalty or censure.

In opposition, the Board maintains that the decision to suspend appellant's teaching certificates for his conduct was proper. The Board argues that appellant has failed to support his assertion that the Board was arbitrary, capricious or unreasonable in finding that appellant engaged in unbecoming conduct. The Board submits that the evidence in this matter fully supports the Board's determination that appellant engaged in unbecoming conduct when he knowingly submitted an "inaccurate insurance claim with the intention of having an otherwise uninsurable event become insurable." The Board further contends that such conduct shows "a serious lapse of judgment." The Board submits that the penalty imposed was appropriate and should not be disturbed as it was based on the nature and gravity of the conduct, and is consistent with the Board's consideration of mitigating evidence, such as appellant's "voluntary withdrawal of his fraudulent claim."

The Commissioner's scope of review in matters involving decisions of the Board, including determinations to suspend teaching certificates, is appellate in nature. *N.J.A.C. 6A:4-4.1(a)*. In other words, absent a demonstration by appellant that the Board acted in an arbitrary, capricious or unreasonable manner, the Commissioner may not overturn the Board's decision.<sup>1</sup> *See id.*; *see also B.C. v. Cumberland Regional School District*, 220 *N.J. Super.* 214, 231-232 (App. Div. 1987); *Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288, 297 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration." *Bayshore*, 122 *N.J. Super.* at 199-200. As such, the Commissioner may not substitute his own judgment for that of the Board where due process has been afforded and where exists sufficient credible evidence in the record to serve as a basis for the decision rendered by the Board.

Upon consideration of the record and all submissions, the Assistant Commissioner – to whom this matter has been delegated pursuant to *N.J.S.A. 18A:4-34* – concurs with the Board for

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<sup>1</sup> Arbitrary and capricious means "willful and unreasoning action, without consideration and in disregard of circumstances." *Bayshore Sew. Co. v. Dep't of Env't. Protection*, 122 *N.J. Super.* 184, 199-200 (Ch. Div. 1973), *aff'd* 131 *N.J. Super.* 37 (App. Div. 1974).

the reasons thoroughly set forth in the December 8, 2017 Order of Suspension. Appellant's filing of a false insurance claim constitutes unbecoming conduct, and a six-month suspension of his teaching certificates is proper as appellant attempted to remedy his fraudulent behavior. It is undisputed that the appellant filed a false claim with his insurance company and was charged with third degree insurance fraud. It is further undisputed that appellant was allowed to participate in PTI for 6 months – after completion of which, the charges were dismissed. The fact that appellant sought to remedy his conduct by later withdrawing his claim, and that the criminal charges against him were dismissed following PTI, do not negate appellant's clearly fraudulent behavior in obtaining additional insurance after an accident – without reporting the accident and the time – and then filing a false claim with the insurance company. The fact that appellant knowingly and intentionally provided inaccurate information to his insurance company is sufficient to constitute unbecoming conduct. The Board was well within its rights to impose a harsher penalty; however, the Board properly took into consideration appellant's remedial efforts. Therefore, the Board's determination is fully supported by the record, and consistent with applicable law and public policy.

The issues raised on appeal were already considered by the Board, and there is nothing in the record to suggest that the Board's decision was arbitrary, capricious or unreasonable; as such, the Commissioner finds no basis upon which to disturb the Board's decision to suspend appellant's teaching certificates for six months for engaging in unbecoming conduct.

Accordingly, the decision of the State Board of Examiners is affirmed for the reasons expressed therein.<sup>2</sup>

#### ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: June 11, 2018

Date of Mailing: June 12, 2018

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<sup>2</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1), and applicable Appellate Division rules.

