

183-99

IN THE MATTER OF THE TENURE :
HEARING OF TIMOTHY FITZPATRICK, : COMMISSIONER OF EDUCATION
NEW JERSEY DEPARTMENT OF : DECISION
HUMAN SERVICES. :
_____:

SYNOPSIS

Department certified tenure charges against respondent teacher for unbecoming conduct.

The ALJ dismissed the matter with prejudice, finding with respect to the disputed facts that respondent did not strike a student in his care or cause the student to strike himself and thus concluding that the charges were unfounded and untrue.

The Commissioner affirmed the ALJ's decision, finding no basis, either in the transcript or in the record as a whole, to challenge the credibility determinations of the ALJ, who had the benefit of observing the witnesses firsthand. The tenure charges were dismissed.

June 11, 1999

OAL DKT. NO. 604-98
AGENCY DKT. NO. 492-12/97

IN THE MATTER OF THE TENURE :
HEARING OF TIMOTHY FITZPATRICK, : COMMISSIONER OF EDUCATION
NEW JERSEY DEPARTMENT OF : DECISION
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_____ :

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner New Jersey Department of Human Services (“the Department”) requested an extension of time within which to file exceptions to the initial decision, reporting that it was awaiting receipt of transcripts to facilitate its preparation of such exceptions. The request was granted and the Department’s exceptions and respondent’s reply thereto were filed in accordance with the extended timelines.

The Department excepts to the Administrative Law Judge’s (ALJ) finding that the evidence advanced by respondent in this matter was more persuasive than that proffered by the Department, thus concluding that respondent was not guilty of unbecoming conduct. (Department’s Exceptions at p. 3) In this regard, it argues that, although the ALJ’s findings of facts in her initial decision are essentially correct, “they fail to include information elicited from the witnesses which cast doubt on the credibility of Mr. Fitzpatrick.” (*Id.* at p. 1) The Department cites to specific hearing testimony which, it avers, challenges inferences made by the ALJ with respect to the investigation in this matter being flawed and deficiencies in the decision-

making process utilized by Ms. Colon in reaching her conclusion that the charges against respondent should be documented. (*Id.* at pp. 1-3) It further alleges that the ALJ gave insufficient consideration to the fact that respondent's testimony was replete with inconsistencies in detailing his recollection of the events which transpired in this matter. (*Id.* at p. 3) As such, it reasons, "[b]ased on the testimony of the witnesses, the exhibits in evidence, the post hearing submissions, and [the Department's] exceptions," the greater weight of credible evidence supports the Department's position and, therefore, it urges that the initial decision be reversed "and the charge of unbecoming conduct with its imposition of a 30-day suspension without pay should be reinstated." (*Id.* at p. 6)

In reply, respondent contends that the ALJ's findings in this case are supported by "overwhelming evidence." (Respondent's Reply Exceptions at p. 2) Respondent addresses the conclusions which the Department's exceptions maintain should be drawn from testimony and he presents his own interpretation of these, emphasizing those particular facts which, he maintains, fully support the correctness of the ALJ's decision. Citing *State, Dept. of Health v. Tegnazian*, 194 *N.J. Super.* 435, 450 (App. Div. 1984) for the proposition that "[w]hile the commissioner is not legally bound to follow the ALJ's recommendations, he may not brush them aside[.***] This is particularly true where factual issues are the focus of attention and questions as to the weight and credibility of evidence must be treated," respondent urges:

The resolution of this case, which pits the word of Fitzpatrick against the word of Glonek, hinges on an evaluation of credibility. Judge Duncan is a trained factfinder who had the opportunity to observe the witnesses. The administrative process described in *Tegnazian*, envisions that the Commissioner will not disturb Judge Duncan's credibility findings. Petitioner offered no good reason for the Commissioner to abandon the deference accorded to an ALJ's findings of fact. In the final analysis, there was more than enough reason for Judge Duncan to find that the allegations Glonek made against Fitzpatrick were baseless and untrue.

Therefore, the Commissioner should adopt Judge Duncan's recommended decision. (Respondent's Reply Exceptions at pp. 6-7)

Upon a careful and independent review of the record in this matter, which included a transcript of the hearing conducted at the OAL on November 24, 1998, the Commissioner agrees with the ALJ that the facts existing in this case do not support a conclusion that respondent was guilty of conduct unbecoming a teacher. In reaching his determination here, the Commissioner was fully cognizant that this matter turns almost exclusively on the credibility of witnesses and the weighing of evidence. Notwithstanding the Department's exception assertions to the contrary, the Commissioner finds no basis, either in the transcript or in the record as a whole, to challenge the credibility determinations of the ALJ, who also had the benefit of observing the witnesses firsthand. Rather, he is fully satisfied that the ALJ's recitation of testimony is both accurate and thorough, and that she carefully measured conflicts, inconsistencies, and plausibility of content in deciding which testimony to credit.

Accordingly, the initial decision of the OAL is affirmed for the reasons clearly stated therein. The tenure charges against Mr. Fitzpatrick are hereby dismissed.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

June 11, 1999

* This decision, as the Commissioner's final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.