

STATE BOARD OF EXAMINERS DKT. NO. 0910-146;
COMMISSIONER APPEAL DKT. NO. 3-8/11A

IN THE MATTER OF THE :
REVOCATION OF THE CERTIFICATES : COMMISSIONER OF EDUCATION
OF BRIAN TAYLOR BY THE : DECISION
STATE BOARD OF EXAMINERS. :

Order of Revocation Decision by the State Board of Examiners, August 1, 2011

For the Respondent-Appellant, Michael T. Barrett, Esq.

For the Petitioner-Respondent State Board of Examiners, Farha Ahmed, Deputy Attorney General (Jeffrey S. Chiesa, Attorney General of New Jersey)

Appellant challenges the determination of the New Jersey State Board of Examiners (Board of Examiners) that his actions warranted the revocation of his teaching certificates. The Commissioner has thoroughly reviewed the record of the proceedings before the Board of Examiners and the parties' appellate papers, and concurs with the Board of Examiners' holdings.

The facts have been amply set forth in the various adjudications of the tenure charges – including a Commissioner Decision and an affirmance of same by the Superior Court, Appellate Division – which underlay the Board of Examiners' action against appellant's certificates. Those facts reveal that appellant was found guilty of insubordination towards his administrative superiors and inappropriate behavior towards students, parents and colleagues – the latter behavior having included a physical altercation with a fellow teaching staff member. The Commissioner's and Appellate Division's findings of unbecoming conduct constitute the

law of the case and will not be relitigated here. Under *N.J.A.C. 6A:9-17.5*, such findings may serve as the basis for revocation of teaching certification.

The Board of Examiners provided appellant with the opportunity to present information which might mitigate against action on his certificates. In response, appellant invoked the New Jersey Law Against Discrimination (NJLAD) *N.J.S.A. 10:5-1 et seq.*, arguing that his behavior had been caused by depression – for which he should not be punished. For this proposition, appellant relied on a letter report by James R. Cowan, M.D., in which Cowan concluded that appellant was suffering from depression “associated with the present experience at the school where he teaches.” (Letter Report dated January 23, 2008 from James R. Cowan, M.D. to Florence B. Eatman, M.D., attached to Item #10 of respondent’s statement of items comprising the record.)

Cowan’s report did not, however, contain any determination that depression had caused appellant’s unbecoming behavior; nor would that have been appropriate insofar as Cowan had met with appellant on one occasion only – after the offending behavior had occurred – had administered no testing, and had based his assessment of appellant exclusively upon appellant’s own account of his background and situation. Thus, appellant’s contention that his aggressive behavior was caused by depression lacks factual support.

Further, even if appellant had proven that his behavior had been the result of a depressive disorder, the Board of Examiners would not have been precluded from revoking his teaching certificates. To establish the elements of a *prima facie* discriminatory discharge, the plaintiff employee must prove (1) that he or she was handicapped, (2) that he or she was performing the job at a level acceptable to the employer, (3) that he or she was fired, and (4) that the employer sought to fill the job after he or she left. *Jansen v. Food Circus Supermarkets, Inc.*,

110 *N.J.* 363, 382 (1988) (emphasis added). Since it has been determined that appellant had not been performing his job acceptably, appellant cannot prove one of the four necessary elements of a claim under the NJLAD. Moreover, the Appellate Division has addressed the issue and has determined that it concurs “with the federal authority that laws protecting the handicapped from employment discrimination are not intended to protect against crime or egregious conduct which, if committed by any other employee, would [warrant an] adverse employment decision. *Barbera v. Di Martino*, 305 *N.J. Super.* 617, 640 (App. Div. 1997).

In summary, the Commissioner is not persuaded that there is any basis to disturb the decision of the Board of Examiners to revoke appellant’s certificates.¹ Accordingly, said decision is affirmed and the appeal is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 17, 2012

Date of Mailing: August 17, 2012

¹ Pursuant to *N.J.A.C.* 6A:9-17.10, appellant may file an application for a new certificate upon the satisfaction of the criteria in *N.J.A.C.* 6A:9-17.10(b). Those criteria include the provision of evidence of rehabilitation for the unbecoming conduct. *N.J.A.C.* 6A:9-17.10(b)(3). It is solely the responsibility of appellant to seek and realize that rehabilitation.

² Pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Appellate Division of the Superior Court.