

#177-07 (OAL Decision: Not yet available on-line)

CARRIE L. BRIGHAM, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT : DECISION
OF EDUCATION, OFFICE OF :
CRIMINAL HISTORY REVIEW, :
RESPONDENT. :

SYNOPSIS

Petitioner, a teacher at a private high school in Morristown, challenged a determination by the New Jersey Department of Education, Criminal History Review Unit (Department) disqualifying her from school employment pursuant to *N.J.S.A. 18A:6-7.1*. Petitioner contended that her conviction for a violation of the Federal Food, Drug, and Cosmetic (FD&C) Act does not constitute a disqualifying offense, as the substance which she pled guilty to mislabeling – gamma hydroxybutyrate, or GHB – was not classified as a controlled drug at the time of her offense.

The ALJ found that: there are no material facts in dispute, and the matter is ripe for summary decision; GHB was not classified as a controlled dangerous substance (CDS) by the federal government until March 2000; petitioner committed her offense three years prior to that date; petitioner's conduct could not have supported a prosecution for a CDS violation in 1997; and petitioner's offense of conspiring to misbrand GHB before or after it was introduced into interstate commerce cannot be construed as substantially equivalent to the possession or distribution of a CDS. The ALJ granted the petitioner's motion for summary decision, concluding that petitioner's violation in 1997 of the FD&C Act regarding GHB is not an offense involving a CDS, and does not constitute a conviction for a substantially equivalent crime or offense.

The Commissioner concurred with the ALJ, for the reasons fully set forth in the Initial Decision, that petitioner's conviction for conspiracy to violate the FD&C Act does not disqualify her from school employment pursuant to *N.J.S.A. 18A:6-4.13 et seq.* and *18A:6-7.1 et seq.* In so deciding, the Commissioner stated that under the specific circumstances related to the petitioner's offense, the plain language of statute precludes a finding of disqualification. Accordingly, the Initial Decision – reversing the determination of the Department and finding petitioner qualified for school employment – is adopted as the final decision in this matter.

<p>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.</p>

May 15, 2007

OAL DKT. NO. EDU 3779-06
AGENCY DKT. NO. 66-2/06

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions of the Department of Education (Department) and petitioner’s reply thereto, duly filed pursuant to *N.J.A.C. 1:1-18.4*.¹

On exception, the Department reiterates its arguments before the Administrative Law Judge (ALJ) as substantially set forth in the Initial Decision. (Department’s Exceptions at 1-5) In reply, petitioner objects to the Department’s statement that she admitted to “possessing” the drug in question, stressing that – as the Department elsewhere acknowledges – the offense to which she actually admitted was “mislabeling.” Additionally, she addresses a case law precedent cited by the Department but not specifically discussed in the Initial Decision,² distinguishing the situation in that matter from the one herein. (Petitioner’s Reply at 1-3)

Upon careful and independent review, the Commissioner is compelled – for the reasons fully set forth in the Initial Decision – to concur with the ALJ that petitioner’s conviction for conspiracy to violate the Federal Food, Drug, and Cosmetic (FD&C) Act does not disqualify her

¹ Although the Department’s exceptions were inadvertently addressed to the State Board of Examiners, they were timely filed and promptly redelivered to the Commissioner, as well as properly served on counsel for petitioner.

² *Rixford v. New Jersey State Department of Education*, 97 *N.J.A.R.2d* (EDU) 320, raised by the Department in both its reply brief before the OAL and in exceptions before the Commissioner.

from school employment pursuant to *N.J.S.A. 18A:6-4.13 et seq.* and *18A:6-7.1 et seq.* In so holding, the Commissioner stresses that her determination, like that of the ALJ, is a necessary consequence of the fact that: 1) the drug involved in petitioner’s conviction – gamma hydroxybutyrate (GHB)³ – had not, at the time of her actions, been classified as a “controlled dangerous substance (CDS)” or “controlled substance” under Federal or State law, as it subsequently was; and 2) there is no disqualifying offense in *N.J.S.A. 18A:6-7.1* that is “substantially equivalent” to petitioner’s offense of conspiring to misbrand a drug other than a CDS before or after its introduction into interstate commerce. Under these circumstances, the plain language of the controlling statute precludes a finding of disqualification, notwithstanding the Department’s understandable attempt to apply the law in a manner consonant with the Legislature’s broader intent and the State’s public policy interest in protecting school children.⁴

Accordingly, the Initial Decision of the OAL – reversing the determination of the Department and finding petitioner qualified for school employment – is adopted for the reasons expressed therein.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2007

Date of Mailing: May 15, 2007

³ According to the U.S. Food and Drug Administration, in the early 1990s, GHB was marketed as a dietary supplement for claimed purposes including inducing sleep, releasing growth hormone, enhancing sexual activity and athletic performance, and relieving depression; it also gained favor as a recreational drug, and was used for date rape because of its intoxicating effects. It is considered highly dangerous, and is – apart from its recently approved usage for strictly limited medical purposes – subject to penalties under the most restrictive schedule of the Controlled Substances Act. (http://www.fda.gov/cder/drug/infopage/xyrem/xyrem_qa.htm#1) The parties were advised of the Commissioner’s intent to take official notice of the referenced web page pursuant to *N.J.A.C. 1:1-15.2* and did not object to such notice although offered the opportunity to do so.

⁴ The Commissioner here notes her concurrence with the ALJ that the holdings of *Cidoni* and *Nunez, supra*, are inapplicable in the present matter (Initial Decision at 7), as is *Rixford, supra*. (see Note 2 above).

⁵ 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.*