

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
RUTH MEGARGEE : ORDER OF SUSPENSION
_____ : DOCKET NO: 0304-277

At its meeting of June 10, 2004, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education dismissing Ruth Megargee from her tenured position with the Department of Human Services (DHS) for charges of unbecoming conduct. *In the Matter of the Tenure Hearing of Ruth Megargee*, Docket No. 196-6/00 (Commissioner's Decision, December 31, 2001). DHS had alleged that Megargee was absent from her teaching position without permission. Megargee currently holds a Teacher of the Handicapped certificate, issued in June 1978 and a Teacher of Nursery School certificate, issued in October 1980.

This case originated when DHS certified tenure charges against respondent, Ruth Megargee. Megargee was employed as a Teacher at various DHS facilities during her long tenure. DHS charged her with unbecoming conduct for repeatedly refusing to return to work after an injury even though reasonable accommodations had been made for her.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Lillard Law heard testimony for seven days over a three-month period in 2001. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on November 8, 2001. *In the Matter of the Tenure Hearing of Ruth Megargee and Ruth Megargee v. New Jersey Department of Human Services*, Dkt. Nos. EDU 4693-00 and CSV 8265-00 (November 8, 2001.)

In that decision, ALJ Law focused on whether Megargee's unauthorized absence from duty constituted conduct unbecoming a teacher and, if so, whether her absences warrant her dismissal from her tenured position? (Initial Decision, slip op. at 65). ALJ Law concluded that Megargee was a disabled individual under the New Jersey Law Against Discrimination, *N.J.S.A.10:5-1 et seq.*, due to a work-related injury, who was entitled to a reasonable accommodation at work for her handicap. (Initial Decision, slip op. at 65-66.) The ALJ also noted that the DHS went beyond Megargee's restriction of not being able to lift anything over 40 pounds and offered her positions that required no lifting at all. (Initial Decision, slip op. at 66-67.) Moreover, the ALJ found credible DHS' contention that "the heaviest thing [Megargee] would have to lift all day is a piece of chalk and a textbook." (Initial Decision, slip op. at 68.)

ALJ Law determined that the tenure charges against Megargee were established and that her unauthorized absence from work constituted unbecoming conduct. (Initial Decision, slip op. at 69.) In fact, the ALJ held that DHS "has endured respondent-appellant's absence from duty to the detriment of its obligation to maintain its efficiency." (Initial Decision, slip op. at 70.) According to the ALJ, Megargee's refusal to resume her employment "on unfounded and unsubstantiated grounds" warranted her removal from her tenured position. (Initial Decision, slip op. at 70.) The ALJ therefore entered summary judgment for DHS and removed Megargee from her tenured position with DHS. (Initial Decision, slip op. at 71.)

In a decision dated December 31, 2001, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Megargee. The Commissioner agreed with the ALJ that Megargee "was guilty of unbecoming conduct

when she refused to return to work despite ample forewarning by her superiors that tenure proceedings would ensue if she did not.” (Commissioner’s Decision, slip op. at 82.) The Commissioner further opined that DHS had offered a reasonable accommodation to Megargee that required no lifting or restraining of pupils even though Megargee was not restricted from the latter activity. (Commissioner’s Decision, slip op. at 82.) The Commissioner found that Megargee’s claim that she was brought up on tenure charges for a three day absence to be disingenuous. (Commissioner’s Decision, slip op. at 82.) According to the Commissioner, “the record supports the determination that, in addition to a history of extensive absences, there were problems related to respondent’s acceptance of assignments and/or returning to work, which were antecedent to the filing of the tenure charges.” (Commissioner’s Decision, slip op. at 83.) Accordingly, the Commissioner affirmed Megargee’s removal from her tenured employment with DHS and transmitted the matter to the State Board of Examiners for appropriate action regarding Megargee’s certificates. Both the State Board of Education and the Appellate Division of the Superior Court of New Jersey affirmed the decision to terminate Megargee’s tenure.

Thereafter, on June 10, 2004, the State Board of Examiners issued Megargee an Order to Show Cause as to why her certificates should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Megargee the Order to Show Cause by regular and certified mail on July 27, 2004. The Order provided that Megargee’s Answer was due within 30 days. Megargee filed an Answer on August 26, 2004. In her Answer Megargee admitted that

DHS had brought tenure charges against her. She also stated that the tenure charges were based on only a three day absence from her work and that the absences were legitimate. (Answer, ¶ 3.) In the remainder of her Answer, Megargee admitted the outcome of the tenure proceedings, but denied that there was any basis to revoke or suspend her certificates. (Answer, ¶¶ 4-6.) Megargee also argued that she had always proceeded in good faith, that the tenure charges against her were brought in retaliation for a lawsuit she had brought against DHS for discrimination and retaliation, and that she had applied for a disability pension after the tenure charges were filed and a State doctor found her to be totally disabled. (Answer, Affirmative Defenses.)

After receiving Megargee's response, the Examiners transmitted the case to the Office of Administrative Law (OAL) for the limited purpose of determining whether Megargee's unbecoming conduct warranted action against her certificates. Administrative Law Judge (ALJ) Maria Mancini LaFiandra heard testimony and after receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on December 8, 2008. *In the Matter of the Certificates of Ruth Megargee*, Dkt No. EDE 5320-05 (Initial Decision, December 8, 2008).

In that decision, ALJ La Fiandra determined that the "only issue remaining to be resolved in this matter is whether the unbecoming conduct in which Respondent engaged is so serious or egregious as to merit suspension or revocation of her working certificates." (Initial Decision, slip op. at 5.) The ALJ further noted that Megargee's certification hearing "is not one in which respondent may relitigate the tenure case, which respondent clearly attempted to do in the presentation before me." (Initial Decision, slip op. at 6.) The ALJ summarized that the Commissioner, State Board and Appellate

division all found that Megargee's conduct was more serious than just absence without authorization for three days." (Initial Decision, slip op. at 6.)

ALJ La Fiandra found that the testimony and evidence Megargee presented, much of it hearsay, was unpersuasive given the nature of Megargee's conduct. (Initial Decision, slip op. at 6-7.) The ALJ held that while Megargee's conduct did not endanger the well-being of students, it was recalcitrant: "[s]he not only resisted authority in refusing to return to work, she flouted it as well by ignoring the caveat that tenure charges would follow if she failed to return to work." (Initial Decision, slip op. at 7.) The ALJ therefore ordered Megargee's teaching certificates suspended for one year. (Initial Decision, slip op. at 7.)

Both the Deputy Attorney General (DAG) representing the Board of Examiners and Megargee filed Exceptions to the Initial Decision.¹ The DAG argued that while the reasoning of the Initial Decision in collaterally estopping Megargee from relitigating the issues surrounding her tenure removal was correct, the penalty the ALJ imposed was too lenient. (DAG Exceptions, pp.1-3.) The DAG urged that the Initial Decision should be modified to impose a more stringent penalty. (DAG Exceptions, p.3.)

In her Exceptions, Megargee argued that there was no authority to suspend her certificates based on her absenteeism for bona fide medical reasons. (Megargee Exceptions, pp. 8-18.) Megargee also argued that the Board of Examiners had not met its burden of proving that she was unfit to be a teacher. She noted that "but for the dispute over her absence caused by her disability (and whether the accommodation offered to her was reasonable or not), respondent was an exemplary teacher, who had no blemish on her

¹ Although Megargee's Exceptions were untimely, at its meeting of January 13, 2009, the Board of Examiners voted to accept and consider them.

career spanning over two decades.” (Megargee Exceptions, p. 18.) Accordingly, Megargee argued that the Initial Decision should be modified to provide for no action against her certificates. (Megargee Exceptions, p. 20.)

In Reply Exceptions, the DAG claimed that ALJ LaFiandra properly rebuffed Megargee’s attempt to reintroduce facts that were fully decided during the tenure matter, hearsay evidence unsupported by legally competent evidence and evidence concerning events which occurred subsequent to Megargee’s unbecoming conduct. (Reply Exceptions, pp. 2-4.) The DAG also argued that the Examiners did not need to present fact witnesses regarding Megargee’s conduct since that was already proven in the tenure hearing. (Reply Exceptions, p. 6.) Rather, the only issue that remained before ALJ La Fiandra was one of penalty, which is legal in nature and only called for Megargee to present evidence in mitigation. (Reply Exceptions, p. 6.) Accordingly, the DAG reiterated her argument that the Initial Decision should be affirmed for its reasoning and a stricter penalty imposed. (Reply Exceptions, p. 7.)

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of January 13, 2009, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the decision and the issues raised therein, the Board voted to adopt the Initial Decision. Since Megargee’s unbecoming conduct was established in the tenure proceedings, the only issue remaining here is whether that conduct is sufficient to warrant sanctions against Megargee’s certificates.

There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings.

Contrary to Megargee's assertions, she is not being "punished" merely for missing three days of work or being unable to physically perform her job. As ALJ LaFiandra made clear in her decision, it was Megargee's recalcitrant behavior in cooperating with DHS that warranted the one-year suspension of her teaching certificates. (Initial Decision, slip op. at 7.) Moreover, in examining the entire record in this case, the Board notes (as did the Commissioner, State Board and Appellate Division) that Megargee clearly evinced no desire to return to her employment unless the job presented none of the "imagined" pitfalls Megargee ascribed to it. Her intractability undermined DHS' ability to effectively function and the Examiners therefore agree with the ALJ's assessment that the proper sanction in this case is a one-year suspension of Megargee's certificates. (Initial Decision, slip op. at 7.)

Accordingly, on January 13, 2009 the Board of Examiners voted to suspend Ruth Megargee's Teacher of the Handicapped and Teacher of Nursery School certificates for one year. On this 23rd day of February 2009 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the one-year suspension of Megargee's certificates be effective immediately. It is further ORDERED that Megargee return her certificates to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing:

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A. 18A:6-28*.
RRH:MZ: