

STATE BOARD OF EXAMINERS DKT. NO. 1112-187
AGENCY DKT NO. 10-12/12A

IN THE MATTER OF THE :
REVOCATION OF THE CERTIFICATES : COMMISSIONER OF EDUCATION
OF DAVID KELLY BY THE : DECISION
STATE BOARD OF EXAMINERS. :

Order of Revocation by the State Board of Examiners, November 30, 2012

For the Respondent – Appellant, Edward Cridge, Esq.

For the Petitioner – Respondent State Board of Examiners, Fredrick H. Wu,
Deputy Attorney General (Jeffrey S. Chiesa, Attorney General of New Jersey)

The Commissioner has reviewed the record and the papers filed in connection with the appellant David Kelly’s appeal of the State Board of Examiners’ Order of November 30, 2012, revoking his Teacher of Music Certificate of Eligibility with Advanced Standing and Teacher of Music Certificates. On appeal the appellant maintains that the Board’s decision to revoke his certificates was arbitrary, capricious and unreasonable. Specifically, the appellant argues that the record contains no evidence that the Board conducted any analysis or considered the underlying circumstances concerning the nature of the conduct and the use of a firearm other than the assumption that the appellant was disqualified from public employment pursuant to *N.J.S.A. 18A:6-7.1*. The appellant further maintains that he is currently appealing the decision of the Department of Education, Criminal History Review Unit, that disqualified him from school employment, and as such the revocation of his certificates should be vacated.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute his judgment for that of the Board so long as the appellant

received due process and the Board's decision is supported by sufficient credible evidence in the record. Further, the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious, or unreasonable. *N.J.A.C. 6A:4-4.1(a)*.

After full consideration of the record and all submissions, the Commissioner finds that the record adequately supports the Board's determination that the appellant engaged in unbecoming conduct and that the revocation of the appellant's certificates was the appropriate penalty. The appellant admits that after consuming several alcoholic beverages he displayed a rifle to two young individuals and told them to get off his property, after which the rifle was accidentally discharged approximately 200 feet from the trespassers. As a result of the incident, the appellant was convicted of several misdemeanor criminal offenses in Pennsylvania. Contrary to the appellant's assertions on appeal, the Board did not simply base its decision on the criminal disqualification but rather the Board expressly stated in the decision that even if the criminal disqualification was overturned, the nature of the incident and the use of a firearm warranted the removal of his certificates. There is nothing in the record to suggest that the Board's decision was arbitrary, capricious or unreasonable, and as a result the Commissioner finds no basis upon which to disturb the decision of the State Board of Examiners.

Accordingly the decision of the State Board of Examiners is affirmed for the reasons expressed therein.*

COMMISSIONER OF EDUCATION

Date of Decision: May 29, 3013
Date of Mailing: May 29, 3013

*This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.