

#310-16 (OAL Decision: Not yet available online)

TAMI STEWART, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF NEW BRUNSWICK,
MIDDLESEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a mathematics specialist in respondent’s school district – challenged the Board’s request that she submit to an independent psychiatric evaluation, pursuant to *N.J.S.A. 18A:16-2*. The Board contended that petitioner exhibited unusual and erratic behavior beginning in the 2015-2016 school year, as well as physical changes, which justified the request that she submit to a psychiatric exam. Petitioner admitted to having experienced weight loss, but asserted that the Board’s contentions regarding her behavior were subjective and unrelated to her work performance. The petitioner contended that her formal evaluations gave her an overall performance rating of proficient moving toward distinguished; further, petitioner argued that the Board has failed to meet its burden of proof to show that her behavior met the standard of a “harmful, significant deviation from normal mental health affecting her ability to teach, discipline or associate with children of the age of the children subject to her control in the school district.” *Kochman v. Keansburg Board of Education*, 124 *N.J. Super.* 203, 212 (Ch. Div. 1973).

The ALJ found, *inter alia*, that: *N.J.S.A. 18A:16-2* provides that “The board may require individual psychiatric or physical examinations of any employee, whenever, in the judgment of the board, an employee shows evidence of deviation from normal physical or mental health;” in this case, both parties recognize *Kochman, supra*, as the seminal case interpreting *N.J.S.A. 18A:16-2*; it is the Board’s burden to prove by a preponderance of the credible evidence that the petitioner demonstrated a harmful, significant deviation from normal mental health that affects her ability to do her job sufficient to compel her to undergo a psychiatric exam; the Board alleged a number of perceived improper behaviors exhibited by petitioner during the 2015-2016 school year – including, *inter alia*, extreme and rapid weight loss, mood swings, showing a colleague a tattoo located on her back, and hiding under a desk – but relied largely on uncorroborated hearsay testimony in making its case; there is no evidence that petitioner was a danger to students or co-workers, nor was she unable to perform the duties of her job; on the contrary, petitioner received only positive performance evaluations. The ALJ concluded that the Board has not met its burden of proof in this matter, and ordered that the Board’s requirement that petitioner submit to a psychiatric evaluation was improper. Accordingly, the ALJ rejected and reversed the Board’s decision to invoke *N.J.S.A. 18A:16-2*.

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter.

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.

August 26, 2016

OAL DKT. NO. EDU 01186-16
AGENCY DKT. NO. 3-1/16

TAMI STEWART, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
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RESPONDENT. :

The record and Initial Decision of the Office of Administrative Law (OAL)¹ have been reviewed, along with the Board’s exceptions – filed pursuant to *N.J.A.C.* 1:1-18.4 – and petitioner’s reply thereto.

In its exceptions, the Board argues that its witnesses provided un-rebutted testimony that the Board was reasonable in requiring that petitioner undergo a psychiatric examination. Citing excerpts of testimony, the Board contends that its witnesses demonstrated: changes in petitioner’s physical appearance and weight, which were indicative of an eating disorder; petitioner’s suspected drug or alcohol abuse; and petitioner’s unusual and erratic behavior – such as hiding under a secretary’s desk as she claimed that demons were chasing her, and unfastening her pants to show the Vice Principal a tattoo on her back. Accordingly, the Board maintains that the principal recommended that petitioner undergo a psychiatric examination out of concern for her health and the well-being of students and staff in the building.

The Board also disputes the Administrative Law Judge’s (ALJ) finding that the testimony of the nursing staff and principal consisted of uncorroborated hearsay evidence as to

¹ The Initial Decision of the OAL appears to have been inadvertently captioned as a dismissal.

petitioner's erratic behaviors. The Board argues that the principal was informed by employees of these behaviors and – even though they did not testify at the hearing – the information that they told him influenced his decision to recommend a psychiatric examination. The Board further contends that petitioner's own rambling testimony corroborates that of the principal and nurses, and further claims that petitioner understood that people were worried about her well-being. As such, the Board maintains that it met its burden of proving that petitioner was required to submit to a psychiatric examination.

In reply, petitioner argues that the ALJ's decision should be adopted because the Board failed to present any competent evidence in support of most of its allegations. Additionally, with respect to the allegations that were supported by evidence, the ALJ properly found that petitioner's work performance was not affected and there was no evidence that she posed a threat to the health or safety of the students or staff. Petitioner points out that her performance evaluations were above average. Further, petitioner complied with the Board's request that she undergo an alcohol and drug screening, and the results were negative. Finally, petitioner disputes the Board's attempt to discredit her testimony; instead, petitioner maintains that her testimony – in which she acknowledges knowing that her coworkers were concerned – was sincere. As such, petitioner argues that the ALJ properly denied the Board's request that she undergo a psychiatric examination.

Upon review, the Commissioner concurs with the ALJ that the Board has not met its burden of proof that petitioner's behavior demonstrated a deviation from normal mental health that was harmful and affected her ability to teach. The Commissioner is not persuaded by the Board's exceptions, which do not warrant reversal of the ALJ's conclusion. Pursuant to *N.J.S.A. 18A:16-2*, a board may require “individual psychiatric or physical examinations of any employee, whenever, in the judgment of the board, an employee shows evidence of deviation

from normal physical or mental health.” Such deviation from normal mental health has been defined to mean “harmful, significant deviation from mental health affecting the teacher’s ability to teach, discipline, or associate with children of the age of the children subject to the teacher’s control in the school district.” *Kochman v. Keansburg Board of Education*, 124 N.J. Super. 203, 212 (Ch. Div. 1973). The Commissioner agrees with the ALJ that the evidence presented by the Board did not demonstrate a decline in petitioner’s work performance or prove that she posed a health or safety threat to her students or co-workers. The Commissioner also concurs with the ALJ that – with respect to many of the allegations – the Board failed to present legally competent evidence to support the hearsay testimony, as required by the residuum rule, *N.J.A.C. 1:1-15.5*. As such, the Board failed to meet its burden of demonstrating that petitioner deviates from normal mental health, thereby requiring a psychiatric examination.

Accordingly, for the reasons stated therein, the Initial Decision of the OAL is adopted as the final decision in this matter.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 26, 2016

Date of Mailing: August 26, 2016

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