

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Certificates of Elizabeth Sheehy,
State Board of Examiners, New Jersey
Department of Education.

Order of Suspension by the State Board of Examiners, November 4, 2020

For the Respondent-Appellant, James J. Uliano, Esq.

For the Petitioner-Respondent State Board of Examiners, Laurie Fichera, Deputy
Attorney General (Gurbir S. Grewal, Attorney General of New Jersey)

The Commissioner has reviewed the record and the papers filed in connection with appellant Elizabeth Sheehy's appeal of the Order of the State Board of Examiners (Board), dated November 4, 2020, suspending her Teacher of Blind or Partially Sighted (TBVI) and Teacher of Handicapped certificates for a period of one year. Following the issuance of an Order to Show Cause by the Board and a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) found that while appellant's actions demonstrated some inefficiency, she did not intentionally submit false or fraudulent billings, and accordingly dismissed the charges against her. Thereafter, the Board adopted the factual findings in the Initial Decision, while also reaching the legal conclusion that appellant had engaged in unbecoming conduct. Consequently, the Board imposed a penalty of a one-year suspension of appellant's certificates.

On appeal, appellant argues that the fault in this matter lies with the Freehold Township school district, which failed to abide by its own policy requiring a contract for services

provided by independent consultants such as appellant. Appellant contends that the Board erroneously concluded that she did not bill by mistake, because the ALJ found appellant credible in her explanations regarding her billing practices and concluded that there was no evidence that she acted with a knowing purpose or intent to defraud the school district. Additionally, appellant argues that it was inappropriate for the Board to base her suspension on her alleged failure to comply with students' IEPs, as no such allegation was made against her in the Order to Show Cause. Appellant takes issue with the Board's conclusion that she had multiple chances to correct her billing issues but failed to do so, claiming that there is nothing in the record to support that statement. Finally, appellant argues that a one-year penalty is inconsistent with penalties imposed by the Board in other matters.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute her 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 a comprehensive review of the record, the Commissioner finds that the Board's decision was arbitrary and capricious because it incorrectly rejected or modified the ALJ's credibility findings. Pursuant to *N.J.S.A. 52:14B-10(c)*, an agency "may not reject or modify any findings of fact as to issues of credibility of lay witnesses unless it is first determined from a review of the record that those findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." Moreover, in rejecting or modifying any findings of fact, the agency must "state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record."

Ibid.

While the Board states in its decision that it defers to the ALJ's credibility determinations, it also makes findings that directly contradict those credibility determinations. The Board's decision turns, in large part, on its finding that appellant did not bill by mistake, but "knowingly overbilled." That finding is directly contrary to the ALJ's findings, repeated throughout the Initial Decision, that appellant's billing practices were lax and she committed errors, but she did not knowingly defraud the district. In fact, the Board's decision explicitly states that appellant's "billing failures cannot be explained away as unknowing errors, as stated by ALJ Masin." This statement is not a difference in legal conclusions, as the Board asserts, but rather a rejection or modification of a finding of fact based on the credibility of a witness. While the Board may disagree with the ALJ that multiple instances of billing errors by appellant were made unknowingly, it is not permitted to reject or modify the ALJ's credibility finding without stating with particularity its reasons for doing so.

The Commissioner is therefore constrained to remand this matter to the Board to make explicit findings as to whether the ALJ's assessment of the testimony regarding appellant's billing practices was arbitrary, capricious, or unreasonable, or was not supported by sufficient, competent and credible evidence in the record.

Accordingly, this matter is remanded to the State Board of Examiners for further proceedings consistent with this decision.


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 4, 2021
Date of Mailing: May 4, 2021