

New Jersey Commissioner of Education
Final Decision

Raisah Thomas,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

Synopsis

Petitioner challenged the determination of the New Jersey Department of Education, Office of Student Protection (DOE), permanently disqualifying her from employment in schools under the supervision of the Department of Education pursuant to *N.J.S.A. 18A:6-7.2* after a criminal history background check revealed that in 2009, petitioner pled guilty in United States District Court, Newark, to a misdemeanor crime of “Possession of Stolen Bank Checks” in violation of 18 U.S.C. § 2113(b) and 18 U.S.C. § 2. Petitioner contended that her 2009 plea was to a “low-level misdemeanor” and that this does not meet the standard of being a disqualifying crime. The DOE filed a motion to dismiss, arguing that since petitioner did not challenge the fact that she was convicted of the crime, the only issue for determination is whether that crime was “substantially equivalent” to one of the disqualifying offenses enumerated under *N.J.S.A. 18A:6-7.1*. Petitioner failed to respond to the motion.

The ALJ found, *inter alia*, that: petitioner has failed to appear for hearings related to this case despite proper notice; petitioner was convicted of a theft-related federal misdemeanor in 2010; the statute under which she was convicted, 18 U.S.C. § 2113(b), is “substantially equivalent” to *N.J.S.A. 2C:20-3*; her conviction would have qualified as a third-degree indictable offense under New Jersey law, *N.J.S.A. 2C:20-2(b)(2)(a)*; and under *N.J.S.A. 18A:6-7.1 et seq.*, a third-degree theft conviction covered by *N.J.S.A. 2C:20-3* disqualifies petitioner from employment in “a facility, center, school, or school system under the supervision of the Department of Education.” The ALJ concluded that the DOE’s decision to disqualify petitioner from employment pursuant to *N.J.S.A. 18A:6-7.1, et seq.* was appropriate and that no facts have been presented to demonstrate that it was arbitrary, capricious, or unreasonable. Accordingly, the ALJ granted the respondent’s motion to dismiss the petition.

Upon review, the Commissioner concurred with the ALJ that petitioner’s criminal history disqualifies her from employment in schools under the supervision of the DOE. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the petition of appeal was dismissed.

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.

231-24
OAL Dkt. No. EDU 00914-23
Agency Dkt. No. 306-11/23

New Jersey Commissioner of Education
Final Decision

Raisah Thomas,

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v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioner is disqualified from employment in schools under the supervision of the Department of Education.

Accordingly, the Initial Decision is adopted as the final decision in this matter. Respondent's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2024
Date of Mailing: June 18, 2024

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

GRANTING MOTION TO DISMISS

OAL DKT. NO. EDU 00914-23

AGENCY DKT. NO. 306-11/23

RAISAH THOMAS,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

OFFICE OF STUDENT PROTECTION,

Respondent.

Raisah Thomas, petitioner, pro se

Kevin F. Milton, Deputy Attorney General, for respondent (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: May 16, 2024

Decided: May 17, 2024

BEFORE **MATTHEW G. MILLER**, ALJ:

STATEMENT OF THE CASE

Petitioner, Raisah Thomas appeals the September 19, 2023, decision of respondent New Jersey Department of Education, Office of Student Protection, to disqualify her, pursuant to N.J.S.A. 18A:6-7.2, "from serving in any position, paid or

unpaid, with any education institution under the supervision of the Department of Education.”

PROCEDURAL HISTORY

Raisah Thomas was issued a Certificate of Eligibility with Advanced Standing with a K–6 Elementary School Teacher Endorsement on May 1, 2005. She was issued her standard teaching certificate in 2007 with the same endorsement, which she currently holds. On September 19, 2023, petitioner was notified by the Office of Student Protection (OSP) that based on findings made during a criminal background check conducted pursuant to N.J.S.A. 18A:6-7.2, she was “permanently disqualified from serving in any position, paid or unpaid, with any education institution under the supervision of the Department of Education.”

On November 13, 2023, Ms. Thomas emailed a Petition for Appeal to the State Department of Education’s Office of Controversies and Disputes. After supplying proof of service on respondent on November 22, 2023, the appeal was transmitted to the Office of Administrative Law (OAL), where it was received on December 19, 2023, for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On December 18, 2023, prior to the matter being forwarded to the OAL, respondent filed a Motion to Dismiss in Lieu of Answer.

An initial conference was scheduled for March 26, 2024, at which time petitioner failed to appear. Nonetheless, a briefing schedule was set, with Ms. Thomas being given until May 6, 2024 to file opposition to the Motion to Dismiss, and respondent until May 16, 2024 to serve a reply brief.

Having given Ms. Thomas more than sufficient time in which to communicate with the OAL and having not heard from her, the record formally closed on May 16, 2024.

INITIAL FINDINGS OF UNDISPUTED FACT

The following **FACTS** of the case are not in dispute:

1. On or about May 1, 2005, Raisah Thomas was issued a Certificate of Eligibility with Advanced Standing Teacher of K-6 Elementary School by the State Board of Examiners. A standard certificate was issued in 2007 and on June 1, 2014, that certificate was renewed. (C-A.)
2. On September 19, 2023, a criminal background investigation, including a fingerprint check, revealed that on November 16, 2009, Ms. Thomas had pled guilty in the United States District Court, Newark, to the misdemeanor offense of “Possession of Stolen Bank Checks” in violation of 18 U.S.C. § 2113(b) & 18 U.S.C. § 2. Ms. Thomas was sent a disqualification letter at that time. (R-A.)
3. The specific allegations against petitioner are detailed in an August 25, 2008, criminal complaint. (R-B.)
4. When she received the disqualification letter, Ms. Thomas was employed as a “Teacher 3” at Northern State Prison in Newark, New Jersey.
5. On March 18, 2010, Ms. Thomas was sentenced to one year of probation, assessed a fee and ordered to pay \$1,000 in restitution to the victim. A Judgment of Conviction was entered by the Hon. Joel A. Pisano that day. (R-C.)
6. Ms. Thomas has not received a pardon for the conviction, nor has it been expunged.¹

¹ In fact, only certain low-level drug offenses are eligible for expungement in the federal system. 18 U.S.C. § 3607(a).

MOTION

The respondent argued that the motion to dismiss is appropriate here since, per N.J.A.C. 6A:3-1.10, even if petitioner's factual allegations are all found to be true, there is no legal basis for her appeal.

More specifically, respondent argues that since Ms. Thomas is not challenging the fact that she was convicted of the crime alleged, the only issue to be decided is a legal one: whether that crime (a violation of 18 U.S.C. § 2113(b) and 18 U.S.C. § 2) is a "substantially equivalent crime" to disqualifying New Jersey criminal statute N.J.S.A. 18A:6-7.1. Respondent posits that petitioner's federal conviction is "substantially equivalent" to theft by unlawful taking, a violation of N.J.S.A. 2C:20-3(a). When the amount in dispute is over \$500 but less than \$75,000, that is a crime of the third degree,² which, per N.J.A.C. 18A:6-7.1(c)(2), is a crime for which conviction would disqualify her from employment in "a facility, center, school, or school system under the supervision of the Department of Education."

Ms. Thomas has not responded to the motion. However, she did present an argument in her initial appeal which will be reviewed below.

APPEAL

In her appeal to the Board, Ms. Thomas wrote:

I have been a working professional and productive for over 16 years under my Standard Education license without blemish, and to now take that away from [me] would be a major detriment to me as well as my family. I was awarded my Standard teaching license after the said offense in 2007, and to take it back after a 16 year clean slate is the reason why I am contesting this.

In the written communication from the Office of Student Protection the investigator was not specific as to what was the disqualifying offense. It was rather ambiguous. I do not have an extensive criminal history. I have a low degree

² N.J.S.A. 2C:20-2(b)(2)(a).

misdemeanor, that allowed me to continue working and for the State of NJ. To my knowledge, my record does not reflect any violent offenses, nor does my misdemeanor fall into any of the categories of the first or second degree offense listed in N.J.S.A. 18A:6-7.2, N.J.S.A. 18A:6-4.13 or N.J.S.A. 18A:12-1.2. My offense did not deal with child abuse, or drug offenses. I did not serve any jail time. Additionally, under the laws of the state, 10 years or more without any offenses added to my record, should qualify me for some type of clean slate expungement of my record.

[A-A.]

THE CRIMINAL ALLEGATIONS

On August 25, 2008, an FBI agent swore out a criminal complaint against petitioner alleging, in essence, that from November, 2007 through April, 2008, she possessed and used checks stolen during a bank robbery. (R-B.)

The complaint alleged that on October 12, 2007, an armed robbery was committed at a Bank of America branch in Edison, New Jersey. Included in the haul were American Express Travelers Cheques and Gift Cheques. Following the robbery, a cooperating witness informed the FBI that in November, 2007, Ms. Thomas and her husband approached him and offered him \$50 to store a pouch with the words "Bank of America" printed on it which contained gift checks. He agreed.

On April 13, 2008, Ms. Thomas retrieved some of the checks and gave two of them to the cooperating witness as compensation for storing them. Then, both the witness and the petitioner went shopping utilizing the checks. The following day, Ms. Thomas allegedly negotiated at least twenty of the checks at a credit union in Rahway.

On April 18, 2008, the FBI executed a search warrant at petitioner's home, at which time she admitted that she knew that the checks were stolen, that she had taken the pouch containing the checks to the witness's home and had asked the witness to store it. The witness turned the bag over to the FBI and it was found to contain American Express Gift Cheques and Traveler's Cheques in excess of \$10,000. (R-B.)

CRIMINAL LAWS

Ms. Thomas was initially charged with violations of 18 U.S.C. § 2113(c) and 18 U.S.C. § 2. Ultimately, however, she pled guilty to 18 U.S.C. § 2113(b)³ and 18 U.S.C. § 2.

Those statutes read as follows:

18 U.S.C. § 2113 (bank robbery and incidental crimes)

(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding \$1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than ten years, or both; or

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding \$1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 2 (principals)

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Ms. Thomas was sentenced to one year of probation, assessed a \$25 fee and ordered to pay \$1,000 in restitution to Bank of America. (R-C.)

³ 18 U.S.C. § 2113(c) merely dictates the same penalties for the “taker” and the “storer”.

Respondent argues that the federal statutes above are “substantially equivalent” to N.J.S.A. 2C:20-3(a), which reads:

N.J.S.A. 2C:20-3. Theft by unlawful taking or disposition

a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

Pursuant to N.J.S.A. 2C:20-2(b)(2)(a), “theft constitutes a crime of the third degree if: (a) The amount involved exceeds \$500 but is less than \$75,000.”

LAW AND ANALYSIS

A motion to dismiss filed per N.J.A.C. 6A:3-1.5(g) is the functional equivalent of a motion to dismiss for failure to state a claim filed in civil court per R. 4:6-2(e). Graves v. State Operated Sch. Dist. of Newark, 2017 N.J. Super. Unpub. LEXIS 2417 (App Div. Sept. 26, 2017). The court stated the standard for the granting of same:

When reviewing a Rule 4:6-2(e) motion, a court must determine the adequacy of the pleading and decide whether a cause of action is “suggested” by the facts. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). The court must “search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.” Ibid. (quoting Di Cristofaro v. Laurel Grove Mem’l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)).

[Id. at *8.]

The law cited by the respondent in support of its decision is N.J.S.A. 18A:6-7.1, which reads in pertinent part:

A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or

contract for the paid services of any teaching staff member . . . unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file . . . which would disqualify that individual from being employed or utilized in such capacity or position. . . .

An individual, except as provided in subsection g. of this section, shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or

. . . .

c.

. . . .

(2) A crime as set forth in chapter 39 of Title 2C of the New Jersey Statutes, a third degree crime as set forth in chapter 20 of Title 2C of the New Jersey Statutes, or a crime as listed below:

. . . .

d. For the purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense.

e. Notwithstanding the provisions of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record.

. . . .

g. This section shall first apply to criminal history record checks conducted on or after the effective date of P.L. 1998, c. 31 (C.18A:6-7.1c et al.)

As noted above, respondent argues that, per N.J.S.A. 18A:6-7.1(d), the charges to which Ms. Thomas pled guilty to in 2009 are "substantially equivalent" to New Jersey's

statute covering “[t]heft by unlawful taking or disposition,” N.J.S.A. 2C:20-3. In her appeal, Ms. Thomas argues that her 2009 plea was to a “low-level misdemeanor” and that this does not meet the standard of being a disqualifying crime.

First, a little background. As is well established, New Jersey does not follow the classic “misdemeanor—felony” language employed in the federal system and by many states. Rather, New Jersey offenses generally follow the “disorderly persons—indictable” verbiage. For the purposes of simplicity, the terminology is roughly equivalent. However, for legal purposes, it is not.

In the federal system, sentencing classifications are dictated by 18 U.S.C. § 1559. This code provision separates felonies into five classes and misdemeanors into three classes; these are a single class of infractions (the lowest-level offense). For the highest-grade misdemeanor, the maximum prison sentence is, in essence, six to twelve months. Given that the maximum sentence for 18 U.S.C. § 2113(b) is “imprisonment by not more than one year,” it is by definition a Class A misdemeanor.

In New Jersey, indictable offenses are separated into four “degrees,” with fourth-degree offenses being the least severe. N.J.S.A. 2C:43-1. There are two classifications of disorderly persons offenses, petty disorderly and disorderly, as well as simply “offenses,” such as ordinance violations. For “DPs,” maximum sentences are dictated by N.J.S.A. 2C:43-8: DPs carry a maximum jail sentence of six months, while the maximum for “PDPs” is thirty days.

However, while the length of the potential penalty is certainly interesting, it has become clear that it is the language of the statutes and how New Jersey treats the crime that is more important in determining how the out-of-jurisdiction offense is viewed.

There is limited case law concerning this issue. However, it was most recently addressed directly in Bazerman v. New Jersey Department of Education, 2023 N.J. Agen. LEXIS 439 (August 29, 2023). There, the petitioner was convicted in New York of “official misconduct,” which is a Class A misdemeanor. However, in New Jersey, “official misconduct” is a second-degree indictable crime. The basic allegation was that in his

employment as a police officer, Mr. Bazerman was authorized to purchase equipment related to surveillance and wiretap activities and would then receive reimbursement for same. However, he was unable to account for the equipment for which he had received reimbursement. He was thereafter charged with official misconduct, pled guilty and was barred from future public employment and paid restitution of over \$5,000, but did not serve any jail time and the conviction was later expunged.

Respondent argued that the New York official-misconduct offense was substantially equivalent to New Jersey's and because in New Jersey it is a second-degree crime, Bazerman was automatically disqualified. Among other issues, the Commissioner found that the ALJ had "erroneously focused his analysis on the penalties that courts may impose at sentencing for each offense instead of the nearly identical statutory language defining the elements of each offense." Id. at *3.

The Commissioner emphasized the similarities of the statutory language and noted that a plain-language reading is how the similarity issue should be approached. Id. at *6 (citing In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 18 (2020)). The Commissioner also cited to Kelly v. New Jersey State Department of Education, Criminal History Review Unit, Commissioner Decision No. 396-18R (Dec. 18, 2018), <https://www.nj.gov/education/legal/commissioner/2018/dec/396-18R.pdf>, where the focus "centered around the statutory elements of each crime and not their degree or the penalties associated with them." Id. at *7.

In a somewhat similar case involving an unsuccessful applicant for a security officer position, Bugge v. New Jersey State Police, 2018 N.J. Super. Unpub. LEXIS 2514 (App. Div. Nov. 15, 2018), Bugge had previously pled guilty to a "general violation of civil service law" in New York, a misdemeanor. However, the respondent deemed that violation to be "the equivalent of a fourth-degree crime in New Jersey." Id. at *2.

The ALJ had upheld respondent's denial and that was affirmed in the final agency decision, with the Commissioner noting that the conviction in New York, while a misdemeanor there, was, per N.J.S.A. 11A:10-2, a fourth-degree crime in New Jersey,

which is the substantive equivalent of a felony, not a misdemeanor. Id. at *5; see also Medica v. New Jersey State Police, 2020 N.J. Agen. LEXIS 602 (June 5, 2020).

Here, respondent's disqualification decision was based on N.J.S.A. 18A:6-7.1(c)(2), which covers a wide variety of third-degree theft-related offenses. (N.J.S.A. 2C:20 et seq.)⁴ It is argued here that the only difference between third-degree theft by unlawful taking in New Jersey (N.J.S.A. 2C:20-3) and the federal bank-robbery statute (18 U.S.C. § 2113) is that the New Jersey statute is not specifically directed to banks.⁵ In the relatively rare New Jersey cases involving the theft of money from banks, the appropriate charges have been found to be second-degree robbery (N.J.S.A. 2C:15-1(a)(2)) and third-degree theft (N.J.S.A. 2C:20-3(a)). See State v. Williams, 244 N.J. 592, 601 (2021); State v. King, 215 N.J. Super. 504, 508 (App. Div. 1987).

I agree with respondent. In comparing the language of the two relevant statutes, the second part of the federal statute is clearly the "substantial equivalent" of New Jersey's theft by unlawful taking statute. Both have essentially identical mens rea requirements and require specific amounts of property/money to be stolen (and there is no question that those minimums have been met).

I further agree with respondent's argument that the passage of time since the offense does not impact the disqualification law's effect. As was detailed in In re Tenure Hearing of John Socrates, 2011 N.J. Agen. LEXIS 591 (June 24, 2011), in 1998, N.J.S.A. 18A:6-7.1 was amended to remove extensive verbiage permitting an individual to demonstrate rehabilitation by clear and convincing evidence in order to maintain employment. That language was replaced with the current language which only provides the individual with the opportunity to challenge the accuracy of the information discovered in the background check. Id. at *3.⁶

⁴ It also covers weapons-related offenses (N.J.S.A. 2C:39 et seq.).

⁵ In fact, New Jersey does not have specific bank robbery-related statutes. Rather, these crimes are covered by N.J.S.A. 2C:15-1 et seq. (robbery) and N.J.S.A. 2C:20 et seq. (theft). Most bank robberies are actually covered by federal law due to the involvement of the Federal Deposit Insurance Corporation (FDIC).

⁶ 1998 N.J.S.N. 851 (enacted June 30, 1998).

While I am not completely unsympathetic to petitioner's argument that a substantial period of time has elapsed since her conviction, her offense falls directly within the scope of the disqualification statute and the Legislature explicitly removed the rehabilitation "exception" from the plain language of the statute.

Given the above, I **FIND** the following:

- a. That Ms. Thomas was convicted of a theft-related federal misdemeanor in 2010.
- b. That the statute under which she was convicted, 18 U.S.C. § 2113(b), is "substantially equivalent" to N.J.S.A. 2C:20-3.
- c. That given the dollar value of the theft, her conviction would have qualified as a third-degree indictable offense under New Jersey law. See N.J.S.A. 2C:20-2(b)(2)(a).
- d. That per N.J.S.A. 18A:6-7.1 et seq., a third-degree theft conviction covered by N.J.S.A. 2C:20-3 disqualifies Ms. Thomas from employment in "a facility, center, school, or school system under the supervision of the Department of Education."

Ultimately, I **CONCLUDE** that the respondent's decision to disqualify petitioner from employment pursuant to the dictates of N.J.S.A. 18A:6-7.1, et seq. was appropriate and that no facts have been presented to demonstrate that it was arbitrary, capricious, or unreasonable.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's Motion to Dismiss be and is hereby **GRANTED** and;

It is **FURTHER ORDERED** that Ms. Thomas's appeal be and is hereby **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B 10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES**, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



May 17, 2024

DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency:

May 17, 2024

Date Mailed to Parties:

May 17, 2024

sej

APPENDIX

EXHIBITS

For Court:

C-A Petitioner's certificate status

For petitioner:

A-A Appeal (November 13, 2023)

For respondent:

R-A Disqualification letter from DOE/OSP to petitioner (September 19, 2023)
with background check

R-B Criminal Complaint with attachments (August 25, 2008)

R-C Judgment of Conviction (March 18, 2010)