

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATION OF : STATE BOARD OF EXAMINERS
ROBERT ELMEZZI : APPLICATION FOR CERTIFICATION
: AFTER REVOCATION
_____ : DOCKET NO: 0304-135

At its meeting of September 26, 2002, the State Board of Examiners (Examiners) reviewed an application Robert Elmezzi had submitted requesting certification as a Teacher of Biological Science and Teacher of Physical Science. Elmezzi had previously held a Teacher of Health Certificate of Eligibility in New Jersey. The Examiners revoked that certificate on April 15, 1999, since Elmezzi had presented a fraudulent Teacher of Biological Science certificate to a school official in order to obtain public school employment. *In the Matter of the Certificate of Eligibility of Robert Elmezzi*, Docket No. 489-11/98-176 (Bd. of Examiners, April 15, 1999.) In June 2002, Elmezzi then sought certification after revocation.

At its September 26, 2002 meeting, after a thorough review of Elmezzi's submissions, the Examiners determined that Elmezzi had not adequately demonstrated rehabilitation and thus, was not a viable candidate for certification. In support of his application, Elmezzi primarily relied on observation reports from his employment subsequent to the revocation of his Certificate of Eligibility. While those observation reports were positive, they provided little insight, if any, as to his rehabilitation for the conduct that caused the Examiners to revoke Elmezzi's Certificate of Eligibility initially. The Examiners noted that Elmezzi's Certificate of Eligibility was not revoked as a result of poor ratings or observation reports. Rather, the Examiners had revoked his Certificate of Eligibility because he knowingly altered his certificate in order to teach a subject

matter for which he was not qualified. Since Elmezzi did not indicate that he had received counseling or other such help that would allow him to understand his actions and prevent their recurrence, the Examiners could not assess whether such conduct was likely to be repeated. The Examiners therefore voted to deny Elmezzi's application for certification after revocation. *In the Matter of the Certification of Robert Elmezzi*, Docket No. CR005-09/02 (Bd. of Examiners, September 26, 2002.)

Elmezzi then filed an appeal of the denial of his certification to the State Board of Education (State Board).¹ He also filed a motion to supplement the record on appeal, pursuant to *N.J.A.C.* 6A:4-1.9(b), with three additional documents that he had not previously submitted to the Examiners. According to *N.J.A.C.* 6A:4-1.9(b), the State Board may determine that the record on appeal may be supplemented by the taking of additional evidence. The three documents included a letter relating to the circumstances surrounding Elmezzi's conduct leading to the revocation of his certificate, a letter of recommendation and a psychological evaluation issued by Mark H. Seglin, Ph.D. On May 7, 2003, the State Board granted the motion to supplement the record with the three documents.

The Deputy Attorney General (DAG) representing the Examiners in the appeal then requested that the State Board return the matter to the Examiners, so that it could review the record as supplemented. The State Board agreed that the Examiners should have the opportunity to review the entire record in the first instance "to consider whether the appellant has demonstrated his rehabilitation on the basis of the enhanced record."

¹ Elmezzi initially filed his appeal to the Commissioner of Education but was later advised that his appeal should be presented to the State Board.

Accordingly, on September 3, 2003, the State Board remanded the matter to the Examiners for its consideration.

The Examiners reviewed the case at its meeting of September 25, 2003 and voted to transmit the matter to the Office of Administrative Law (OAL) in order to have testimony regarding the three documents that the State Board had added to the record. Administrative Law Judge (ALJ) Ken Springer heard testimony on September 29 and October 1, 2004. The record closed and ALJ Springer issued his Initial Decision on May 5, 2005. *In the Matter of the Application of Robert Elmezzi For Certification After Revocation*, OAL Dkt. No. EDE 11515-03 (Initial Decision, May 5, 2005).

In that decision, ALJ Springer found that Elmezzi had demonstrated “sufficient rehabilitation to justify issuance of any teaching certificates for which he presently qualifies.” (Initial Decision, slip op. at 8-9). ALJ Springer noted that Elmezzi was subject to numerous stressful life events at the time he committed his fraudulent act but that in the intervening six and a half years he had come to recognize the seriousness of his offense and accept personal responsibility for it. (Initial Decision, slip op. at 9.) In addition, ALJ Springer noted that through pastoral counseling, Elmezzi had become a productive and contributing member of society and an accomplished and effective teacher. (Initial Decision, slip op. at 9.) Finally, ALJ Springer indicated that Elmezzi’s psychological evaluation by a reputable expert established that he did not have a personality disorder and was unlikely to repeat his dishonest behavior. (Initial Decision, slip op. at 9.)

Applying *N.J.A.C. 6A:9-17.10(b)*,² ALJ Springer noted that the Examiners should not issue a new certificate to a candidate whose certificate had been revoked unless certain conditions were met. (Initial Decision, slip op. at 10). The conditions relevant to the Examiners' review of Elmezzi's reapplication are set forth below:

1. The candidate shall satisfy all criteria for the issuance of the certificate that are in effect at the time of the application for the new certificate;
2. At least four years shall have passed since the effective date of revocation of the previous certificate;
3. The candidate shall have provided evidence demonstrating rehabilitation for the unbecoming conduct, incompetence, or other cause for the revocation.

[*N.J.A.C. 6A:9-17.10(b)*]

ALJ Springer found that *N.J.A.C. 6A:9-17.10(b)* requires that an applicant wait at least four years after revocation before applying for recertification. (Initial Decision, slip op. at 10). ALJ Springer noted that six years had passed since Elmezzi's certificate was revoked. (Initial Decision, slip op. at 11). ALJ Springer also found that the evidence established that "he has become a competent and well-respected teacher and has accumulated five years of successful teaching experience at three different parochial schools." (Initial Decision, slip op. at 11). ALJ Springer further emphasized that Elmezzi "has undergone thorough psychological evaluation, confirming that he is not a danger and unlikely to ever cheat again." (Initial Decision, slip op. at 11). He concluded that "New Jersey would be missing a valuable opportunity to obtain the services of a skilled science teacher if it permanently bars Elmezzi from returning to the public school classroom." (Initial Decision, slip op. at 11).

² ALJ Springer inadvertently refers to *N.J.A.C. 6A:9-17.10(b)* as *N.J.A.C. 6A:9-17.10(c)* within his Initial Decision. Thus, for purposes of clarity, the Examiners' decision will refer to the correct citation, *N.J.A.C. 6A:9-17.10(b)*.

Consequently, the ALJ recommended that the Examiners “restore Elmezzi’s certificate of eligibility as a teacher of health” and that he be permitted to apply for any other teaching certificate for which he may be eligible under current rules. (Initial Decision, slip op. at 12.) The Deputy Attorney General representing the Examiners in the case filed exceptions in opposition to the Initial Decision, and Elmezzi’s attorney submitted responsive exceptions in support of the decision.

At its meeting of July 21, 2005, the State Board of Examiners reviewed the Initial Decision as well as the exceptions and Elmezzi’s reply. After reviewing the entire record, the Examiners voted to adopt the Initial Decision with modification.

The Examiners agree with the ALJ’s assessment that, based on the evidence presented, Elmezzi has demonstrated rehabilitation. However, to the extent ALJ Springer relied on evidence of Elmezzi’s past life events leading to the forging of the certificate, such evidence is irrelevant to the examination of whether Elmezzi is now rehabilitated. *See N.J.A.C. 6A:9-17.10*. Moreover, ALJ Springer applied *N.J.A.C. 6A:9-17.10(b)* when determining that Elmezzi was rehabilitated; however pursuant to *N.J.A.C. 6a:9-17.10(a)*, once an individual’s certificate has been revoked it cannot be reinstated. Rather, “an individual who has had a certificate revoked may file an application for a new certificate with the Board of Examiners.” *N.J.A.C. 6A:9-17.10(a)*. Indeed, as noted by ALJ Springer, *N.J.A.C. 6A:9-17.10(c)(1)* states that a candidate must satisfy the criteria in effect when applying for a new certificate. ALJ Springer erred, therefore, when he ordered that the “State Board of Examiners restore Elmezzi’s certificate of eligibility as a teacher of health.” (Initial Decision, slip op. at 12.) Thus, although this tribunal

considers Elmezzi rehabilitated, he must still satisfy all current criteria for the issuance of a new Teacher of Health Certificate of Eligibility.

Accordingly, it is therefore ORDERED that the Initial Decision in this matter be adopted with the modification as set forth above. It is further ORDERED that Robert Elmezzi may apply for those teaching certificates for which he may be qualified under current licensing standards.³

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: SEPTEMBER 12, 2005

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-9.

³ At the hearing, Elmezzi presented only himself as a witness. (Initial Decision, slip op. at 8). Elmezzi did not present Mark H. Seglin, Ph.D., the psychologist who issued the psychological evaluation regarding Elmezzi's rehabilitation. (Initial Decision, slip op. at 8). Because the purpose of the remand from the State Board to the Examiners was to consider Elmezzi's rehabilitation based on the enhanced record and Elmezzi did not call Seglin, the DAG did not have an opportunity to question Seglin about his qualifications or his report. Thus, the DAG litigating the matter was forced to call Seglin as an adverse fact witness. *See* Tapes of the Proceedings, October 1, 2004.

It appears that the ALJ interpreted *N.J.A.C.* 6A:4-1.9 as allowing a party to introduce an expert report at a subsequent hearing without testimony from the proposed expert. Such an interpretation is contrary to the Administrative Procedure Act. *See N.J.S.A.* 52:14B-10(a) (in a contested case a party shall have an opportunity to cross-examine a witness for a true and full disclosure of the facts); *see also N.J.A.C.* 1:1-15.9 (stating that a court must find that the expert testimony is based on facts or data perceived or made known to the witness at or before the hearing and that the expert's testimony is within the scope of the special knowledge, skill, experience or training possessed by the expert.) *N.J.A.C.* 6A:4-1.9 talks about supplementing the record before the State Board so that the State Board may consider the material in its review of a decision from the Commissioner, the State Board of Examiners or the School Ethics Commission. Thus, the regulation implies that a hearing has already taken place, evidence rulings have been made and parties have had an opportunity to question witnesses prior to the matter being reviewed by the State Board. Here, the matter was remanded to the Examiners and later transmitted to the OAL for a review of the enhanced record. Indeed, the State Board, in remanding the matter, agreed with the Examiners that it should have an opportunity to review the entire record in the first instance. The matter was again to be considered by the OAL as a contested case and ultimately decided by the Examiners. Thus, it follows that the parties before the OAL should have had an opportunity to explore fully the evidentiary issues associated with the enhanced record. Accordingly, Seglin's report should not have been accepted as evidence without having Seglin testify that he did indeed create the report, that the report fell within his special knowledge and expertise and that his opinion was based on facts or data known to his prior to the hearing.