

DHPL #136-97
SB # 39-97

IN THE MATTER OF THE DISQUALIFI- :
CATION FROM SCHOOL EMPLOYMENT : STATE BOARD OF EDUCATION
OF J.C. : DECISION

Decided by the Deputy Commissioner of Education, March 21, 1997

For the Petitioner-Appellant, J.C., pro se

J.C. (hereinafter "petitioner"), who was employed as a teacher's aide for the Sawtelle Learning Center, was disqualified by the Office of Criminal History Review of the Department of Education from continued employment in the State's schools after a criminal history review conducted pursuant to N.J.S.A. 18A:6-7.1 revealed that he had been convicted of possession of a controlled dangerous substance—cocaine—following an arrest in May 1992. Petitioner sought to overturn his disqualification on the basis of rehabilitation.

In a letter decision dated March 21, 1997, the Deputy Commissioner of Education upheld the disqualification,¹ concluding that petitioner had failed to demonstrate clear and convincing evidence of his rehabilitation as required by N.J.S.A. 18A:6-7.1.

¹ We note that N.J.S.A. 18A:4-33 authorizes the Commissioner to "designate an assistant commissioner as deputy commissioner with full power to act in his place and stead during any absence or inability of the commissioner and at such other times as the commissioner may designate." Such authority expressly includes assignment by the Commissioner of the "hearing and determination of controversies and disputes which may arise under the school laws...." N.J.S.A. 18A:4-34.

Petitioner filed the instant appeal to the State Board of Education, along with a motion to supplement the record pursuant to N.J.A.C. 6:2-1.9 with two letters confirming his completion of drug rehabilitation programs.

We grant petitioner's motion to supplement the record on appeal and, after a careful review of the record, including the additional documents submitted by petitioner, reverse the decision of the Deputy Commissioner. We find that petitioner has demonstrated clear and convincing evidence of his rehabilitation.

N.J.S.A. 18A:6-7.1 provides, in pertinent part:

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 if the individual has affirmatively demonstrated to the Commissioner of Education clear and convincing evidence of his or her rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

1. The nature and responsibility of the position which the convicted individual would hold;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the individual when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have had the individual under their supervision.

A former supervisor of petitioner praises him as “an excellent worker, prompt and reliable, and well liked by my customers.” The supplemental materials provided by petitioner indicate that he attended and successfully completed an outpatient alcohol and drug treatment program at Mountainside Hospital between June and November 1993. He also subsequently completed a residential rehabilitation program at the Adult Rehabilitation Center of the Salvation Army in the summer of 1994. That 90-day program included “individual counseling, group therapy, substance abuse education, twelve step programs, chapel services and work therapy.” The record also includes letters of recommendation from long-time acquaintances of petitioner, including a police officer, two attorneys and his high school English teacher.

Petitioner explains that at the time of his arrest, he had just dropped out of college and was “struggling to find direction and purpose in my life.” He subsequently re-enrolled in college, married and had a child. In July 1996, petitioner took the National Teacher’s Exam, scoring 182 out of a possible 200. The record also indicates that petitioner was 21-years-old at the time of his arrest in 1992, and that he subsequently graduated from Ramapo College of New Jersey in 1995 with a bachelor of arts degree in Literature. There have been no further arrests.

Under the circumstances, we find that further penalization of this individual is neither a just result nor warranted under the terms of the statute. Given the uncontradicted evidence in the record, including the recommendation of petitioner’s supervisor and his successful completion of drug and alcohol rehabilitation programs, we conclude that he has demonstrated clear and convincing evidence of his

rehabilitation pursuant to N.J.S.A. 18A:6-7.1(e). We stress, in addition, that petitioner was disqualified from employment as a teacher's aide, a position in which he would be under the direct supervision of a classroom teacher.

Accordingly, we reverse the decision of the Deputy Commissioner disqualifying petitioner from service in the schools of New Jersey as a teacher's aide.

July 2, 1997

Date of mailing _____