OAH 80-1302-33183

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF TEACHING

In the Matter of the Application of L.C.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

This matter came on for an evidentiary hearing before Administrative Law Judge LauraSue Schlatter on July 18, 2016, at the Office of Administrative Hearings in St. Paul, Minnesota. Following presentation of their cases, the parties made their closing statements orally.

Nathan J. Hartshorn and Corinne Wright-MacLeod, Assistant Attorneys General, appeared on behalf of the Disciplinary Committee of the Minnesota Board of Teaching (Committee). L.C. (Applicant)[1] appeared on her own behalf without representation.

On August 15, 2016, the Administrative Law Judge issued a Post-Hearing Order to Amend the Notice and Order for Hearing and to Permit Additional Proceedings. In response, the Committee filed an Amended Notice and Order for Hearing and Prehearing Conference (Amended Notice) on August 19, 2016. The record was held open until September 2, 2016 to provide the Applicant an opportunity to respond to the Amended Notice. The Applicant provided no response and the record closed on September 2, 2016.

STATEMENT OF THE ISSUES

1. Whether the Applicant demonstrated by a preponderance of the evidence that she is entitled to a renewal of her short-call substitute teaching license because her conduct does not constitute immoral character or conduct pursuant to Minn. Stat. § 122A.20, subd. 1(a)(1) (2016).

2. Whether the Applicant demonstrated by a preponderance of the evidence that she is entitled to a renewal of her short-call substitute teaching license because she did not commit fraud or misrepresentation in obtaining a licensing pursuant to Minn. Stat. § 122A.20, subd. 1(a)(5) (2016).

[1] The Applicant's name is replaced with initials at the Applicant's request because this report contains sensitive medical information.

SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that the Applicant failed to demonstrate by a preponderance of the evidence that she is entitled to a renewal of her short-call substitute teaching license. The Administrative Law Judge further concludes that the Applicant's conduct as reflected in the incidents of March 11, 2011 and September 20, 2013 constitutes immoral character or conduct pursuant to Minn. Stat. § 122A.20, subd. 1(a)(1). Finally, the Administrative Law Judge concludes that the Applicant misrepresented the facts concerning her 2013 driving arrest on her application to renew her short-call substitute teaching license. Therefore, the Administrative Law Judge concludes that the Committee properly recommended that the Board of Teaching deny the Applicant's renewal application.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. This case involves the Applicant's appeal of the denial of her application for renewal of her short-call substitute teaching license.[2] The Applicant submitted her application for renewal on August 11, 2015.[3] Her license expired on June 30, 2015, but she was permitted to submit her renewal application during the 2015 calendar year.[4]

2. Teachers applying to renew their licenses are required to complete a "Conduct Review Statement" which asks applicants to provide, among other things, information regarding crimes (except petty misdemeanors) of which they have been convicted.[5]

3. The Minnesota Department of Education (Department) and the Minnesota Board of Teaching (Board) cooperate in reviewing teacher licensing applications. The Department initially receives all such applications. If there are questions or concerns regarding an applicant's conduct, those applications are referred to the Board. A Board staff person reviews the referred applications and refers them further to the Committee if the application involves certain types of conduct, including conduct resulting in criminal convictions.[6]

4. On her August 8, 2015 renewal application, the Applicant reported that she pled guilty and was convicted of gross misdemeanor driving while intoxicated (DWI) in connection with an offense that occurred on September 20, 2013. She stated she had been placed on probation and that her probation would end on December 19, 2017.[7]

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[2] Exhibits (Exs.) 11 and 12.
[3] Testimony (Test.) of Monica Rasmussen.
[4] Test. of M. Rasmussen.
[5] Ex. 100 at 4-6; Test. of M. Rasmussen, L.C.
[6] Test. of M. Rasmussen.
[7] Ex. 101 at 2; Test. of M. Rasmussen, L.C.

5. On her August 11, 2016 license renewal application, the Applicant described the September 20, 2013 incident as follows:[8]

> I was out for night of entertainment and thought I felt fine to drive. I made an improper turn onto an empty one way street. In my effort to get out of the street, I was pulled over by a law enforcement officer.

6. On August 20, 2015, the Applicant submitted a letter with additional information regarding her guilty plea to misdemeanor careless driving[9] stemming from a March 2011 incident.[10] The Applicant informed the Board that she was stopped on March 3, 2011, "for a lane violation and improper turn around midnight." The Applicant explained that she took prescribed medications before going to bed that night, but later awoke and drove to Wal-Mart. According to the Applicant, because this incident involved only prescription medications and no alcohol, the DWI violation with which she was originally charged was amended to Careless Driving.[11] The Applicant further explained that one of the prescription medications she took that evening was Ambien, a medication she no longer takes and which is now on her drug allergy list.[12] As a result of her guilty plea, the Applicant was sentenced to supervised probation for a period of one year, ending on November 28, 2012.[13]

7. At the time she was arrested on March 3, 2011, the Applicant acknowledged to the arresting officer that she had taken the following prescription medications before driving that night: two Ambien, three Flexeril, one Xanax and one Vicodin.[14] She stated that she was under a doctor's care and that the Ambien were for a sleep disorder, the Flexeril and Vicodin for neck pain, and the Xanax for anxiety.[15]

8. The Committee did not fault the Applicant for failing to submit the information about the 2011 Careless Driving incident with her initial renewal application.[16] However, the Committee considered the 2011 incident when it denied the Applicant's license renewal application.[17]

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[8] Ex. 101 at 2; Test. of M. Rasmussen, L.C.
[9] Minn. Stat. 169.13, subd. 2 (2010).
[10] The March 11, 2011 incident was not included as a basis for the Board's decision in the original NOTICE AND ORDER FOR HEARING AND PREHEARING CONFERENCE. However, it was included in the Board's November 23, 2015 letter denying Applicant's license renewal application and was included among the issues litigated at the contested case hearing. As noted above, the Administrative Law Judge later provided the Committee with an opportunity to amend its NOTICE AND ORDER FOR HEARING AND PREHEARING CONFERENCE to address this issue and to allow the Applicant an additional chance to respond to the Amended Notice.
[11] Ex. 2.
[12] Ex. 2; Test. of L.C.
[13] Ex. 3.
[14] Ex. 7 at 8.
[15] Ex. 7 at 16-17.
[16] Test. of M. Rasmussen.
[17] Test. of M. Rasmussen; Ex. 103 at 1.

9. In a letter dated September 9, 2015, the Board offered the Applicant an opportunity to provide additional information about the 2013 and 2011 convictions for DWI and Careless Driving. The Board also requested copies of police reports, court and probation records in connection with the convictions.[18] The Applicant provided the requested records, which the Board forwarded to the Committee for their consideration.[19]

10. Before making its recommendation to the Board, the Committee considered all of the documents the Applicant submitted in connection with her application, including the police reports, court and probation records.[20]

11. On November 23, 2015, the Board notified the Applicant that the Committee had reviewed, and recommended denial of, the Applicant's Minnesota short-call substitute teaching license renewal application. The Committee's reasons for the denial were that: a) the Applicant's "conduct involving careless driving in 2011 and a DUI in 2013 constitutes immortal conduct"[21] pursuant to Minn. Stat. § 122A.20, subd. 1(a)(1); and b) the "significant discrepancies between the information contained in [the Applicant's] licensure renewal application and the official reports of [the Applicant's] conduct"[22] amounted to misrepresentation pursuant to Minn. Stat. § 122A.20, subd. 1(a)(5). Specifically, the Committee noted the portion of the Applicant's characterization of the 2013 incident which read that she made an "improper turn into an empty one way street" as compared to the official police report, which stated that the Applicant was "traveling at a high rate of speed the wrong way on metro interstate 94."[23]

12. The Board's November 23, 2015 letter informed the Applicant that "denial is appropriate until [December 19, 2017, when] you have completed your probation, at which time you may reapply."[24] The letter also informed the Applicant of her appeal rights.[25]

13. In a letter dated December 21, 2015, the Applicant requested an additional review of her application. She asserted that she did not misrepresent facts on her application, but provided "a truthful shorter version" of the events that lead to her November 2013 arrest. The Applicant contended that she did not recall the "exact details" of the events on the night of the DWI arrest before obtaining the police report at the Board's request.[26] The Applicant acknowledged that because she was inebriated, she drove the wrong way along North Fourth Street in downtown Minneapolis, continuing along the street when it became the exit from southbound interstate 94, and that she drove onto the interstate in the wrong direction.[27]

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[18] Ex. 102.
[19] Exs. 6-10; Test. of M. Rasmussen.
[20] Test. of M. Rasmussen; Exs. 7-10.
[21] Ex. 103 at 1; Test. of M. Rasmussen.
[22] Ex. 103 at 1; Test. of M. Rasmussen.
[23] Ex. 103 at 1; *See* Ex. 9 at 12.
[24] Ex. 103 at 1.
[25] Ex. 103 at 1.
[26] Ex. 104 at 1; Test. of L.C.
[27] Exs. 104 at 1, 104.1.

14. The Committee read and considered the Applicant's December 21, 2015 letter.[28] After weighing the information the Applicant provided in her December 21, 2015 letter against all of the other information the Committee had in this matter, the Committee determined that the Applicant's application, as a whole, included misrepresentations by the Applicant.[29] In a letter dated January 13, 2016, the Board notified the Applicant that the Committee continued to recommend that her application be denied.[30]

15. The Applicant's statement that the law enforcement stop occurred at the time she was making an "effort to get out of the [empty one way] street"[31] is inconsistent with the arresting officer's report, which states that he saw the Applicant's car "swerving from lane to lane, using all four lanes of traffic, causing traffic driving the correct way . . . to swerve and slam on their breaks (sic) to avoid a crash."[32]

16. At the time she was stopped while driving the wrong way on the interstate, the Applicant's preliminary breath test (PBT) showed her alcohol concentration was .163, which is more than twice the legal limit of .08.[33]

17. The Applicant satisfied all of the probation conditions that required monitoring by Hennepin County Community Corrections and Rehabilitation. Her probation officer reported that the Applicant is now on administrative probation until the end of her probationary period on December 19, 2017. She is not required to check in with probation any longer.[34]

18. When a teacher submits an initial license application, the Board conducts background checks, including fingerprinting. The Board expects currently licensed teachers to disclose crimes on their renewal applications, but does not necessarily require them to do so before they apply to renew their licenses. Failure to report a crime (other than a petty misdemeanor) with a renewal application is in itself a basis for disciplinary action against a licensed teacher. Generally, the Board relies on this system of self-reporting at the time of reapplication, although sometimes the Board becomes aware that a teacher has committed a crime through news reports, or because a school district reports to the Board that a particular teacher has committed a crime.[35] If the Board learns during the term of a teacher's licensure that the teacher has committed a crime, the Board will consider disciplinary action.[36]

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[28] Test. of M. Rasmussen; Ex. 105.
[29] Test. of M. Rasmussen.
[30] Ex. 105.
[31] Ex. 101 at 2.
[32] Ex. 9 at 12.
[33] Ex. 9 at 13; Test. of M. Rasmussen. *See* Minn. Stat. § 169A.20, subd. 1(5) (2016).
[34] Ex. 107.3; Test of L.C.
[35] Test. of M. Rasmussen.
[36] Test. of M. Rasmussen.

19. The Committee does not necessarily deny all teaching license applications to applicants who have DWI convictions. The Committee looks at each application on a case by case basis. For example, if there has been just one conviction and the applicant is placed on probation, the license would likely be granted. The Committee reviews all of the information regarding the arrest, conviction, application, the seriousness and recentness of the offense, whether there have been multiple offenses and how close in time they occurred to one another, or whether there have been multiple offenses involving intoxication.[37] Thus, it is not remarkable that another short-call substitute teacher would have had her license renewed at a time when she was also on probation for a DWI, while the Applicant's license renewal was denied.[38]

20. The Committee considered all of the relevant circumstances of which it was aware when it determined that denial of the Applicant's renewal application was appropriate, including that the Applicant had two convictions that occurred as a result of driving while under the influence of drugs or alcohol within two years, the danger to the public as a result of the Applicant's offense in November 2013, and the Applicant's misrepresentations regarding the seriousness of the November 2013 incident.[39]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Board are authorized to consider the charges against the Applicant under Minn. Stat. §§ 122A.20, subd. 1(a)(1); 14.50 (2016).

2. The Applicant timely appealed the denial of her license renewal application. This matter is, therefore, properly before the Board and the Administrative Law Judge.

3. The Board has complied with all relevant substantive and procedural legal requirements.

4. Pursuant to Minn. Stat. § 122A.20, subd. 1 (2016), upon receiving a written complaint, the Board may refuse to renew a teacher's license on the basis of immoral character or conduct.

5. The law enforcement and court documents contained in Exhibits 7 through 10 in this proceeding constitute the written complaint required by Minn. Stat. § 122A.20, subd. 1.

6. The Applicant failed to prove by a preponderance of the evidence that her conduct underlying the 2013 conviction for gross misdemeanor DWI, in combination with

[37] Test. of Rasmussen.
[38] Test. of Rasmussen.
[39] Test. of Rasmussen.

her conduct underlying the 2011 conviction for Careless Driving did not constitute immoral character or conduct for purposes of Minn. Stat. § 122A.20, subd. 1(a)(1).

7. The Applicant failed to prove by a preponderance of the evidence that her application to the Board did not misrepresent the incident that resulted in her 2013 gross misdemeanor conviction. Nor did the Applicant demonstrate by a preponderance of the evidence that her later written statement to the Board cured her initial misrepresentations.

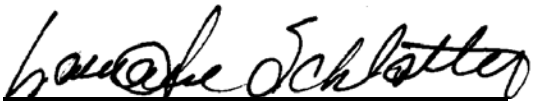
8. The Board has reasonable grounds to deny the Applicant's teaching license renewal application based on the Minn. Stat. § 122A.20, subd. 1(a)(1), (5).

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Board of Teaching deny Petitioner's teaching licensure renewal request.

Dated: September 13, 2016



LAURASUE SCHLATTER
Administrative Law Judge

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No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2016), the Board shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. Parties should contact Erin Doan, Executive Director, Minnesota Board of Teaching, 1500 Highway 36 West, Roseville, MN 55113, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and Administrative Law Judge of the date the record closes. If the Board fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2016).

Under Minn. Stat. § 14.62, subd. 1 (2016), the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Immoral Conduct

The Applicant argued that Minn. Stat. §122A.20 subd. (1)(a)(1), is ambiguous and does not define "immoral character or conduct." Both parties pointed to *Shaw v. Minnesota Bd. of Teaching*,[40] a case in which the Minnesota Court of Appeals addressed the meaning of the term "immoral" as it relates to the Board's authority to discipline a teacher. *Shaw* involved a teacher who engaged in sexual behavior in a men's restroom during a teacher's conference. After reviewing several definitions of "immoral," the *Shaw* court ultimately adopted an "ordinary" meaning, defining immoral as "corrupt, indecent, depraved or dissolute, or . . . conduct which offends the morals of the community in which it occurred."

Relying in part on *Shaw*, the Applicant asserted that immoral conduct must be sexual in nature, or involve violence, or somehow be directly related to her teaching abilities. The Committee did not disagree that the language of the statute is ambiguous, but insisted that its application of the statutory language is reasonable and consistent with *Shaw*. The Committee argued that it was the Applicant's history of twice driving while under the influence of drugs or alcohol in about a two-year period that primarily provoked the Committee's concern. In addition, the extreme danger to the public that the Applicant posed during the 2013 incident led the Committee to conclude that, considered overall, her conduct was immoral.

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[40] 2001 WL 605096 at 3, *quoting In re the Proposed Revocation/Suspension of Teaching Licenses of Altonn*, 1998 WL 879168 at 9 (Minn. Off. Admin. Hrgs. Oct. 20 1998).

The Administrative Law Judge finds that Applicant's conduct was neither corrupt, indecent, nor depraved. Nonetheless, the Applicant's conduct was within the definition of "immoral" if she acted in a manner that was "dissolute" or offensive to the community in which the conduct occurred. The dictionary defines "dissolute" as "lacking restraint"[41] and "marked by indulgence in things (as drink or promiscuous sex) deemed vices . . . ."[42] Conduct that the legislature has elevated to the level of a gross misdemeanor in the criminal code is arguably offensive to the community in which it occurs.

In March of 2011, the Applicant took so many prescription medications in combination in one evening that she was found driving in an almost-non-responsive condition.[43] The arresting officer stated that when he asked the Applicant to get out of her car, she turned it off, then on, then off again, and was sluggish as she got out. Her eyes did not track smoothly; she stumbled and nearly fell several times. The police officers had to catch her more than once to prevent her from falling as they attempted to administer field tests.[44] This incident involved prescribed medications, and the Applicant was permitted to plead to a reduced charge of Careless Driving. As the Committee acknowledged, this incident, alone, does not necessarily demonstrate a lack of restraint on the part of the Applicant.

But in September of 2013, less than two years after entering a guilty plea in the 2011 incident, the Applicant went to a bar and drank enough alcohol so that, shortly after she left the bar, her alcohol concentration measured .163, more than twice the legal limit. While in that impaired condition, she drove the wrong way on an interstate at a high rate of speed, endangering many lives in addition to her own. It was sheer luck that no one was injured or killed as a result of her choice to indulge in excessive drinking. The choice the Applicant made that night, especially in light of her previous history, showed a lack of restraint marked by indulgence in alcohol. Therefore, the Administrative Law Judge finds that the Applicant's conduct on September 20, 2013 was dissolute and, as reflected in the gross misdemeanor charge, offends the morals of the community.

The Applicant's argument that the ambiguity in Minn. Stat. § 122A.20, subd. (1)(a)(1), renders it impossible to apply fairly is not persuasive. The legislature gave the Board broad discretion when it stated that the Board "may" refuse to renew a license for "immoral character or conduct."[45] It could have specified crimes for which the Board is authorized to take disciplinary action. In fact, the legislature has specified crimes for which the Board is required to take disciplinary action.[46] But where the legislature has given the Board discretion to take disciplinary action, it has also declined to include any statutory citations to specific criminal behavior or other defining language. Thus, the Board's position that a pattern of arrests for driving under the influence will likely lead to discipline is consistent with the authority delegated to it by the legislature. Similarly,

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[41] Black's Law Dictionary, 9th Ed. (Thomson Reuters, 2009).
[42] Merriam-Webster's Collegiate Dictionary, 11th Ed. (Merriam-Webster, 2011).
[43] Ex. 7 at 6.
[44] Ex. 7 at 7.
[45] Minn. Stat. § 122A.20, subd. 1(a)(1).
[46] Minn. Stat. § 122A.20, subd. 1(b).

Ms. Rasmussen's testimony that the Committee reviews DWIs on a case-by-case basis is also in keeping with the discretion granted to the Board.

Misrepresentation

The Applicant argued that the statements on her application regarding the 2013 incident did not amount to misrepresentation or fraud. Instead, she said, they were simply shorter versions of what actually happened. She maintained that she should not have been expected to repeat, verbatim, what is in the police report at a time when she did not have the police report in front of her. Furthermore, she claimed at the hearing that she simply forgot that she drove onto the interstate until she saw the police report. The Applicant asserted that she honestly reported the DWI and would not have logically done so had she been trying to hide the truth about what happened, knowing that the Board could review the police reports.

The Applicant's arguments are not persuasive in light of the written statements she submitted to the Board regarding the 2013 DWI incident. As reflected in the Findings of Fact above, the Applicant's description of the incident minimized both the extent of her intoxication and the dangerousness of her conduct. The Applicant described attempting to exit "an empty one way street" when in reality she drove across multiple lanes of oncoming traffic on an interstate. Her claim that she was just not fully remembering the events of that night is not credible. Even if, the morning after the incident, she did not remember what she had done, she must have had the events described to her before she pled guilty to a gross misdemeanor in court. Similarly, phrasing her situation as being "out for night of entertainment and thought I felt fine to drive" is a far cry from being intoxicated at twice the legal limit to drive. While she might have been unaware of how drunk she was at the time, the Applicant must have learned how seriously intoxicated she was by the time she went to court. It strains credibility that a person who, following the 2013 incident, gave up alcohol completely, and who now will not touch food or drink mouthwash if it has alcohol in it, did not realize until she looked at a police report that she was more than casually drunk. Even in her December 21, 2015 letter to the Board, the Applicant did not actually acknowledge that she entered the interstate, only that she drove north "until [she] came to the entrance to 94." Thus, the Applicant's minimizing statements to the Board can appropriately be viewed as misrepresentation.

Permission to Reapply after Probation

The Applicant argued that the Board's statement that she may reapply in December of 2017 when her probation ends is further evidence of the ambiguity of the Board's statutory authority and, by implication, the arbitrary nature of its actions. The Applicant asserted that there is no reasonable distinction between a judgment regarding her morality at this time, and a judgment regarding her morality at the end of her probation.[47] Ms. Rasmussen explained that the Board simply uses the end of probation as a marker of time.[48] The Administrative Law Judge notes that, if the Applicant continues

[47] Test. of L.C.
[48] Test. of M. Rasmussen.

to demonstrate restraint, she will be demonstrating that she no longer fits the definition of "immoral." For the Board to tie the Applicant's reapplication to a period of continued self-restraint is reasonably related to the basis for the application denial.

The Applicant also pointed out that she taught with the license she seeks to renew now for almost two years following her DWI conviction. Prior to her application for renewal, she was not required to proactively report the conviction. At the hearing, the Applicant questioned why, if she is immoral, it was appropriate for her to be in the classroom prior to the time she filled out her reapplication form, but now it is not appropriate. The Committee's response, in essence, was that it lacks the resources to proactively track all 60,000 licensed teachers in Minnesota for possible criminal activity. When the Board learns of a teacher who has engaged in criminal conduct, it takes action.[49] This may not be a satisfactory answer, but given the statutory scheme created by the legislature and the resources allotted to the Board, the result is not arbitrary. The Board requires teachers to report criminal convictions when they seek to renew their licenses and the Board then acts on those reports. It cannot act on what it does not know.

The Applicant pointed out that by the time her probation ends, the time for her license expiration will have passed. She asked whether an application from her at that time would be treated as a renewal or a new application. The Administrative Law Judge overruled this question, holding that it is not an issue for decision in this case. However, the Administrative Law Judge notes that the Board's letter of November 23, 2015 states only that the Applicant may reapply, but is not clear how the reapplication will be treated. The Administrative Law Judge urges the Board to clarify for the Applicant what her status will be should the Board affirm the Committee's recommended denial of the license renewal while continuing to state that the Applicant may reapply at the time her probation is complete.

L. S.

[49] Test. of M. Rasmussen.