

**COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

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| DEPARTMENT OF EDUCATION, | : | |
| Petitioner, | : | |
| | : | |
| | : | |
| v. | : | PSPC DOCKET NO. DI-18-147 |
| | : | |
| | : | |
| ROCCO L. PERONACE, | : | |
| Respondent. | : | |

MEMORANDUM AND ORDER

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Department of Education’s (“Department”) Exceptions to the Hearing Officer’s Proposed Report and Order.

History

On July 12, 2018, the Department filed a Notice of Charges alleging that Respondent was convicted of Driving Under the Influence of Alcohol (“DUI”): Highest Rate of Alcohol (BAC .16+)-3rd Offense and provided false information on a certification application by answering “no” when asked if criminal charges were pending against him. The Notice of Charges further alleged that Respondent was guilty of immorality, intemperance, and negligence and requested that the Commission issue an order suspending or revoking Respondent’s educator certification and employment eligibility.

When no response was filed by the due date, the Department, on August 21, 2018, filed a Motion for Judgment on Default. In its Motion, the Department requested

that the Commission find Respondent in default and issue an order directing the Department to revoke his educator certification and employment eligibility.

On August 31, 2018, the Commission received a *pro se* letter from Respondent, the stated purpose of which was “to serve as clarification and explanation of the false claims brought against [him].” In the letter, Respondent acknowledged his 2011 arrest on DUI charges, but denied the allegation that he provided false information on a certification application. He also denied the allegation in the Notice of Charges that he was terminated by the School District of Philadelphia. While Respondent acknowledged he made an “egregious mistake”, he requested that there be “no ethics violation or any other blemish of record.”

The Commission held a hearing on the Department’s Motion for Judgment on Default on January 14, 2019. Respondent participated by telephone. By Memorandum and Order dated February 15, 2019, the Commission denied the Motion for Judgment on Default.

By letter dated March 6, 2019, the Commission appointed Thomas A. Blackburn to act as hearing officer and directed him to conduct an evidentiary hearing and to prepare a proposed report for the Commission. A hearing was held on June 19, 2019. Respondent waived his right to be represented by counsel and represented himself. The Department was represented by Nadya J. Chmil, Assistant Counsel. Following the hearing, the hearing officer set a briefing schedule. The Department filed its post-hearing brief on September 13, 2019. Respondent filed his post-hearing brief on October 9, 2019. The Department did not file a reply brief, and the record closed on October 24, 2019.

The hearing officer issued his proposed report on October 24, 2019. On November 15, 2019, the Department timely filed exceptions to the proposed report. Respondent did not reply to the Department's exceptions, nor did he file his own exceptions to the proposed report. The Commission heard oral argument on the Department's exceptions at its January 13, 2020 public meeting. Respondent was provided notice of the meeting and informed of his right to be heard in person or through a designated representative but chose not to participate. Following oral argument, the Commission voted unanimously to deny the Department's exceptions and to accept the hearing officer's proposed report.

Discussion

Section 14 of the Act provides in relevant part that the proposed report of the hearing officer shall be accepted by the Commission unless the educator or the Department files exceptions with the Commission within 30 days of the mailing date of the proposed report. 24 P.S. § 2070.14(a)(1). After consideration of exceptions to the hearing officer's proposed report, the Commission shall accept, modify or reject the hearing officer's proposed report. 24 P.S. § 2070.14(b).

In his proposed report, the hearing officer found that Respondent was arrested on March 13, 2011 and that he pleaded guilty to DUI: Highest Rate of Alcohol (BAC 0.16+)- 3rd Offense on July 6, 2012. The hearing officer also found that on April 4, 2012, Respondent submitted to the Department an application for an Instructional II teaching certificate in which he falsely answered "no" to the question, "Are criminal charges pending against you, or are you the subject of any inquiry or investigation by a law enforcement agency in this or any other state, territory or country?" The hearing

officer concluded that Respondent was guilty of immorality and intemperance based upon his third-offense DUI conviction, and further that Respondent's false denial of pending criminal charges on his application for an Instructional II certificate constituted immorality and negligence. As a result, the hearing officer recommended that the Commission direct the Department to indefinitely suspend Respondent's teaching certificate.

While the Department agrees with the hearing officer's proposed report and order, it requests in its exceptions that the Commission modify the proposed report to find that Respondent is also guilty of negligence based upon his DUI conviction. Having found Respondent guilty of immorality and intemperance, the hearing officer found it unnecessary to address this additional ground for discipline.

The Commission has defined immorality as "conduct which offends the morals of the Commonwealth and is a bad example to the youth whose ideals a professional educator has a duty to foster and elevate," while intemperance is "a loss of self-control or self-restraint, which may result from excessive conduct." 22 Pa. Code §§ 237.3, 237.5. As noted by the hearing officer, the Commission has previously found that an educator's repeated acts of driving under the influence of alcohol constitutes immorality and intemperance. Dept. of Education v. Cartwright, PSPC Docket No. DI-17-108; Dept. of Education v. Dunning, PSPC Docket No. DI-18-127. The Commonwealth Court has also found that convictions for driving under the influence of alcohol may constitute immorality and cause for termination under the Public School Code of 1949. See Zelno v. Lincoln Intermediate Unit No. 12 Bd. of Dirs., 786 A.2d 1022 (Pa. Cmwlth. 2001)(three drunken driving convictions and two more for driving

without a license amounted to a *per se* justification for dismissal); See also Moffitt v. Tunkhannock Area Sch. Dist., 192 A.3d 1214 (Pa. Cmwlth. 2018)(teacher’s two DUI convictions offended the morals of the community and served as a bad example to youth justifying his dismissal).¹ Therefore, we agree with the hearing officer that it is unnecessary to decide whether Respondent is also guilty of negligence based upon his third-offense DUI conviction and will deny the Department’s exceptions to the proposed report.

Accordingly, we enter the following:

1. Conduct constituting “immorality” is cause for termination of a tenured professional employee under the Public School Code of 1949. Immorality has been defined by courts as a course of conduct that offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate. Zelno, 786 A.2d at 1024. While not binding on the Commission, the court’s decisions in Zelno and Moffitt may be regarded as persuasive authority. See 22 Pa. Code § 237.1.

ORDER

AND NOW, this 31st day of January 2020, it is hereby ORDERED that the Department's Exceptions to the Hearing Officer's Proposed Report and Order are DENIED. It is further ORDERED that the Proposed Report and Order of the Hearing Officer is ACCEPTED and the Department is directed to SUSPEND the educator certification and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member of ROCCO L. PERONACE in accordance with the foregoing Memorandum and the Hearing Officer's Proposed Report and Order. To have the suspension of his educator certification and employment eligibility lifted, Respondent must apply to the Commission for an order lifting the suspension pursuant to 24 P.S. § 2070.16. This order of suspension shall be effective upon the conclusion of any appeal from this order or, if no appeal is timely taken, the expiration of the time prescribed for appeal.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By:



Myron Yoder
Chairperson Pro Tempore

ATTEST:



Shane F. Crosby
Executive Director

Date Mailed: January 31, 2020