

COMMONWEALTH OF PENNSYLVANIA

Brian M. Ankney : State Civil Service Commission
v. :
Office of Administration, :
Executive Offices : Appeal No. 30113

Brian M. Ankney : Anthony R. Holbert
Pro Se : Attorney for Office of Administration

ADJUDICATION

This is an appeal by Brian M. Ankney challenging the Office of Administration, Executive Offices’ determination that he was not eligible for the position of Business Occupations Teacher, Correction Education with the Department of Corrections. A hearing was held on April 4, 2019, at the Strawberry Square Complex in Harrisburg, Pennsylvania, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing, as well as the Briefs submitted by the parties. The issue before the Commission is whether the Office of Administration’s¹ determination that appellant was not eligible for the Business Occupations Teacher, Correction Education position was the result of discrimination.

¹ The Office of Administration will be hereinafter referred to as “OA” throughout the adjudication.

FINDINGS OF FACT

1. By notification dated December 18, 2018, appellant was advised that he did not meet the minimum experience and training requirements (hereinafter “METs”) for the Business Occupations Teacher, Correction Education (hereinafter “BOT”) position and was determined to be ineligible. Comm. Ex. A; AA Ex. 6.

2. Specifically, the notice provided:

While you show completion of a bachelor’s degree in education (mathematics), you do not show completion of student teaching or a teaching practicum within your degree in a business-related subject, nor do you show completion of one year of classroom instruction experience in a business-related subject. Therefore, you remain ineligible for the Business Occupations Teacher, Correction Education.

Comm. Ex. A; AA Ex. 6.

3. The appeal was properly raised before this Commission and was heard under Section 951(b) of the Civil Service Act, as amended.

4. A BOT “is responsible for developing and adapting curriculum, course outlines, lesson plans, and instructional methodology in teaching education courses in specialized business occupations for inmates at a state correctional facility.” Ap. Ex. 1; AA Ex. 1.

5. The BOT position’s METs require:

A bachelor’s degree in business, education, business education, or a related business education field, which included or is supplemented by successful completion of either student teaching or a teaching practicum, in a business-related subject approved by the degree granting institution or one year of classroom instruction experience in a business-related subject.

Comm. Ex. A; N.T. pp. 24, 77; Ap. Ex. 1; AA Exs. 1, 6.²

6. Accounting, marketing, finance, and economics are considered as business-related subjects for the BOT position’s METs. However, mathematics, such as prealgebra and college algebra, is not considered as business-related subjects. N.T. pp. 51, 55, 71, 73.

² The BOT position’s METs are identically presented in the job description, job posting, and the Challenge and Remains Ineligible Notice. Comm Ex. A; Ap. Ex. 1; AA Exs. 1, 6.

7. Appellant applied for the BOT position. N.T. p. 49; AA Ex. 2.
8. Human Resource Analyst 3, Elizabeth Peresolnak,³ received appellant's application and completed an evaluation of appellant's eligibility for the BOT position in December 2018. Peresolnak reviewed appellant's qualifications presented within his application against the BOT position's METs. N.T. pp. 46-47, 49, 51, 54; AA Exs. 1, 2.
9. After reviewing appellant's application, Peresolnak contacted appellant and requested for him to provide additional information. N.T. p. 58.
10. In response to Peresolnak's request, appellant provided Peresolnak an updated resume. N.T. p. 58; AA Ex. 3.
11. After evaluating appellant's application and updated resume against the BOT position's METs, Peresolnak deemed appellant ineligible for the BOT position. N.T. pp. 46-47, 60.

³ According to the appointing authority's exhibit, the Human Resource Analyst 3's name is spelled "Elizabeth Peresolak." AA Ex. 5. However, the transcript reflects the Human Resource Analyst 3's name is spelled "Elizabeth Peresolnak." N.T. pp. 40-41. For the purpose of the adjudication and in conformity with the transcript, we will use the latter spelling.

12. Peresolnak deemed appellant ineligible because appellant failed to provide supporting information to confirm his successful completion of student teaching or a teaching practicum in a business-related subject, and also, failed to show he has one year of classroom instruction experience in a business-related subject. N.T. pp. 50, 53-54.

13. On December 6, 2018, Peresolnak sent a Notice of Ineligibility to appellant informing him that he did not have the required experience to qualify for the BOT position's METs. N.T. pp. 60-61; AA Ex. 4.

14. After receiving the Notice of Ineligibility, appellant filed a challenge⁴ to the ineligibility determination on December 7, 2018. In his challenge, appellant submitted his professional certificate in mathematics and letters of recommendation. N.T. pp. 61-62, 63-64; AA Ex. 5.

⁴ The challenge process, established by the Office of Administration's temporary regulations, is administered solely by the Office of Administration. Specifically:

An applicant who wishes to challenge a finding of ineligibility or an examination score shall submit a written request for a review of eligibility or examination results to the Office of Administration, in writing, within 20 calendar days of receipt of notice of the result being challenged. The Office of Administration will review the applicant's qualifications or examination results and provide the applicant with an explanation or revised result.

15. Peresolnak reviewed appellant's challenge, updated resume, and application. Based upon her review, Peresolnak deemed appellant ineligible for the BOT position. N.T. p. 64.
16. On December 18, 2018, Peresolnak sent a Challenged and Remains Ineligible Notice to appellant. Comm Ex. A; N.T. pp. 64-65, 77-78; AA Ex. 6.

DISCUSSION

The issue in the present appeal is whether appellant has established that the Office of Administration's (hereinafter "OA") determination that he was not eligible for the Business Occupations Teacher, Correction Education (hereinafter "BOT") position was the result of discrimination. Specifically, appellant has alleged procedural discrimination, contending his ineligibility was based upon a mistake of fact. Comm. Ex. B.

In an appeal alleging discrimination, appellant bears the burden of establishing that the personnel action was due to discrimination. *Henderson v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989) *petition for allowance of appeal denied*, 524 Pa. 633, 574 A.2d 73 (1990). In analyzing claims of discrimination⁵ under Section 905.1 of the Act, appellant has the burden of

⁵ The Act addresses both "traditional" and "procedural" discrimination. "Traditional discrimination" encompasses only those claims of discrimination based on race, sex, national origin or other non-merit factors. "Procedural discrimination" refers to a technical violation of the Act. In a case where an employee alleges a technical violation, no showing of intent is required. There must be evidence, however, to show that the employee was harmed by the technical noncompliance or that because of the peculiar nature of procedural impropriety that he or she could have

establishing a *prima facie* case of discrimination by producing sufficient evidence that, if believed and otherwise unexplained, indicates that more likely than not discrimination has occurred. 71 P.S. § 741.951(b); 4 Pa. Code § 105.16; *Department of Health v. Nwogwugwu*, 141 Pa. Commw. 33, 38, 594 A.2d 847, 850 (1991). The burden of establishing a *prima facie* case cannot be an onerous one. *Henderson*, 126 Pa. Commw. at 616, 560 A.2d at 864.

Once a *prima facie* case of discrimination has been established, the burden of production then shifts to the appointing authority to advance a legitimate non-discriminatory reason for the personnel action. If it does, the burden returns to appellant, who always retains the ultimate burden of persuasion, to demonstrate that the proffered merit reason for the personnel action is merely pretext. *Id.* at 614-615. In particular, an employee claiming disparate treatment must demonstrate that he or she was treated differently than others. *Nwogwugwu*, 141 Pa. Commw. at 40, 594 A.2d at 851.

In support of his appeal, appellant testified on his own behalf. In response, OA presented the testimony of Human Resource Analyst 3 Elizabeth Peresolnak.

Appellant contended he is eligible for the BOT position because he has completed student teaching, a teaching practicum, and nine months of classroom instruction experience in a business-related subject. N.T. pp. 24-25. A BOT “is responsible for developing and adapting curriculum, course outlines, lesson plans,

been harmed, but there is no way to prove that for certain. *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 439, 539 A.2d 456, 462 (1988); 71 P.S. § 741.905a.

and instructional methodology in teaching education courses in specialized business occupations for inmates at a state correctional facility.” Ap. Ex. 1; AA Ex. 1. The BOT position’s minimum experience and training requirements (hereinafter “METs”) are as follows:

A bachelor’s degree in business, education, business education, or a related business education field, which included or is supplemented by successful completion of either student teaching or a teaching practicum, in a business-related subject approved by the degree granting institution or one year of classroom instruction experience in a business-related subject.

Comm. Ex. A; N.T. pp. 24, 77; Ap. Ex. 1; AA Ex. 1. One year of classroom instruction experience is equivalent to 1,950 hours and one month of classroom instruction experience is equivalent to 162.5 hours. N.T. pp. 57, 75-76. In appellant’s application for the BOT position, there is a Supplemental Questionnaire, in which the fifth question inquired about a candidate’s ability to prepare a planned course of study in business education. N.T. p. 21; Ap. Ex. 1. Specifically, answer “B” for the fifth question states as follows:

I have developed business-related curricula, course outlines, and lesson plans for students in a college, university, or technical school; OR I have experience in developing curricula, course outlines, and lesson plans as part of a professional practicum or student teaching program related to business education; OR I have developed business related curricula, course outlines, and lesson plans for a period of less than 9 months.

N.T. p. 22; Ap. Ex. 1. Appellant asserted he had the requisite experience to select answer “B” because he taught two semesters, which he asserted is equal to nine months. N.T. p. 22.

Appellant contended he completed two semesters of student teaching at Penn Highlands Community College. N.T. p. 22; Ap. Ex. 1. Appellant acknowledged that his student teaching transcript does not reflect Penn Highlands Community College. N.T. p. 22; Ap. Ex. 4. Appellant taught twelve credits, where one of the courses was Introduction to Accounting and the remaining three courses were College Algebra and Prealgebra. Each course provided three credits each. N.T. pp. 22-23; Ap. Ex. 4. Appellant explained his student teaching is shown through his University of Pittsburgh Unofficial Transcript, where appellant completed student teaching in a secondary school during the fall semester of 1995-1996. N.T. p. 23; Ap. Ex. 6.⁶

In response to appellant's presentation, OA presented the testimony of Human Resource Analyst 3 Elizabeth Peresolnak.

As a Human Resource Analyst 3, Peresolnak completes eligibility evaluations for job applications and processes challenges from ineligible applicants. Peresolnak completes an evaluation of an applicant's eligibility by reviewing an applicant's application against the METs for the applied position. N.T. pp. 44-45. A position's METs are determined between OA and the hiring agency. The hiring agency for the BOT position is the Department of Corrections. N.T. pp. 47-48. An applicant is deemed ineligible for a position when his application does not meet the position's METs. After receiving notice of his ineligibility, an applicant may challenge his ineligibility by submitting additional information to support why he is

⁶ At the close of appellant's presentation, OA entered a motion to dismiss for failure of appellant to establish a *prima facie* case of discrimination. N.T. p. 36. Ruling on the motion was deferred at the hearing. N.T. pp. 36-37. The Commission hereby denies OA's motion to dismiss.

in fact eligible for the position. N.T. p. 45. Peresolnak processes challenges by reviewing an applicant's submitted additional information and his application to determine if the applicant is eligible. N.T. p. 46.

Peresolnak completed an evaluation of appellant's eligibility for the BOT position in December 2018. N.T. p. 46. Peresolnak reviewed appellant's qualifications presented within his application, which included appellant's undergraduate transcript, graduate transcript, and resume, against the BOT position's METs. N.T. pp. 47, 49, 51, 54; AA Exs. 1, 2. According to Peresolnak, although appellant's undergraduate degree qualified as a bachelor's degree in education, appellant failed to provide supporting information to show a successful completion of student teaching or a teaching practicum in a business-related subject and failed to show one year of classroom instruction experience in a business-related subject. N.T. pp. 50, 53-54; AA Ex. 2.

Peresolnak testified that accounting, marketing, finance, and economics are considered as business-related subjects. In contrast, mathematics, such as prealgebra and college algebra, is not considered as a business-related subject. N.T. pp. 51, 55, 71, 73. Peresolnak was unable to determine if appellant acquired student teaching experience in a business-related subject because appellant's student teaching transcript "only shows that he was teaching one year – or one course, excuse me, of intro accounting. It's a three-credit course. However, it doesn't show how often he was teaching that, how long, to make a determination." N.T. p. 55; Ap. Ex. 4; AA Ex. 2. Peresolnak did not consider appellant's student teaching experience in prealgebra and college algebra because they are not considered business-related subjects. N.T. p. 55. Peresolnak explained appellant's completed undergraduate courses in business-related subjects were not considered to determine if he

successfully completed a student teaching or a teaching practicum in a business-related subject. N.T. pp. 78-79. Peresolnak indicated although appellant's resume lists substitute teaching, appellant did not provide the duration of his employment and did not specify if his teaching experience was in a business-related subject. N.T. pp. 53-54, 60; AA. Ex. 2.

After reviewing appellant's application, Peresolnak contacted appellant and requested for him to provide additional information regarding the hours per week and dates for when he was employed as a substitute teacher. N.T. p. 56. In response, appellant provided Peresolnak an updated resume. N.T. p. 58; AA Ex. 3. Peresolnak reviewed appellant's updated resume and determined it did not indicate if appellant successfully completed one year of classroom teaching experience in a business-related subject. N.T. p. 59; AA Ex. 3. After evaluating appellant's application and updated resume against the BOT position's METs, Peresolnak again deemed appellant ineligible for the BOT position. N.T. pp. 46-47, 60.

On December 6, 2018, Peresolnak sent a Notice of Ineligibility to appellant informing him that he did not have the experience for the BOT position required by the METs. N.T. pp. 60-61; AA Ex. 4. After receiving the Notice of Ineligibility, appellant filed a challenge to the ineligibility determination on December 7, 2018. N.T. pp. 61-62; AA Ex. 5. In his challenge, appellant submitted his professional certificate in mathematics and letters of recommendation. N.T. pp. 63-64; AA Ex. 5. Peresolnak testified appellant's letters of recommendation "didn't support any kind of classroom teaching experience." N.T. pp. 63-64; AA Ex. 5. Based upon her review of appellant's challenge, updated resume, and application, Peresolnak once again deemed appellant ineligible for the BOT position. N.T. p. 64.

Peresolnak testified she did not base appellant's ineligibility determinations on anything beyond the BOT position's METs and appellant's submitted materials. N.T. p. 66. On December 18, 2018, Peresolnak sent a Challenged and Remains Ineligible Notice to appellant, which listed the BOT position's METs and explained appellant did "not show completion of student teaching or a teaching practicum within your degree in a business-related subject, nor do you show completion of one year of classroom instruction experience in a business-related subject." Comm Ex. A; N.T. pp. 64-65, 77-78; AA Ex. 6.

On rebuttal, appellant contended his bachelor's degree in mathematics included courses in "business math." N.T. p. 101. Appellant acknowledged he developed business-related curriculums, course outlines, and lesson plans for a period less than nine months. N.T. p. 100. Appellant agreed that the BOT position's METs require at least one year of classroom instruction experience and require the student teaching or teaching practicum to be in a business-related subject. N.T. p. 103-104; Ap. Ex. 1. Appellant acknowledged although his undergraduate transcript documents his student teaching in a secondary school, it does not identify the student teaching's subject matter. N.T. p. 105; Ap. Ex. 6. Appellant admitted to writing "if mathematics is NOT business related, I am not qualified" on his Appeal Request Form. Comm. Ex. B; N.T. p. 105 (emphasis in original).

Having carefully reviewed the record, the Commission finds that appellant has failed to demonstrate how OA's proffered merit-related reasons for determining him not eligible for the BOT position are merely pretextual. In support of our conclusion, we find Elizabeth Peresolnak's testimony credible.⁷

⁷ It is within the purview of the Commission to determine the credibility of the witnesses. *State Correctional Institution at Graterford, Department of Corrections v. Jordan*, 95 Pa. Commw. 475, 478, 505 A.2d 339, 341 (1986).

Peresolnak credibly established how appellant failed to meet the BOT position's METs. Despite having multiple opportunities to provide supporting information for his qualifications, appellant's application, updated resume, and challenge show neither that he has successfully completed student teaching or a teaching practicum in a business-related subject, nor that he has one year of classroom instruction experience in a business-related subject. Peresolnak clearly and credibly explained that prealgebra and college algebra are not considered as business-related subjects. Appellant also admitted to writing "if mathematics is NOT business related, I am not qualified." (emphasis in original). As such, OA has presented credible, legitimate, non-discriminatory reasons for determining that appellant was not eligible for the BOT position. *Henderson, supra*. Accordingly, we enter the following:

CONCLUSION OF LAW

Appellant has failed to present evidence establishing discrimination violative of Section 905.1 of the Civil Service Act, as amended.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Brian M. Ankney challenging the Office of Administration, Executive Offices' determination that he was not eligible for the position of Business Occupations Teacher, Correction Education with the Department of Corrections and sustains the action of the Office of Administration,

Executive Offices in the determination that Brian M. Ankney was not eligible for the position of Business Occupations Teacher, Correction Education with the Department of Corrections.

State Civil Service Commission

Teresa Osborne
Chairman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Officially Mailed: September 3, 2019
Emailed: September 3, 2019