

The Court considered the record of the proceedings before the Ohio State Board of Emergency Medical, Fire and Transportation Services (hereafter "Board"), and the arguments of counsel. The Court reviewed the **Adjudication Order of the Ohio State Board of Emergency Medical, Fire, and Transportation Services dated September 10, 2015**, and the **Report and Recommendation of the Hearing Examiner**, attached thereto and incorporated by reference.

The Court also read the entire **Record of Proceedings** consisting of 447 pages, which addressed the Matter of William A. Eberly (EMS Case No. #2014-312-BE100; EMS Certificate #136954) and was filed in this matter on **October 23, 2015**. The Record of Proceedings included the Transcripts of the Proceedings conducted on March 17, 2015 and April 21, 2015 before Hearing Examiner George Ellis, Esq.

Statement of the Case

This matter is an appeal from an Adjudication Order of the Board, which was entered in EMS Case #2014-312-BE100¹ on September 11, 2015.

On November 28, 2014, the Ohio Department of Public Safety-Division of Emergency Medical Services (hereafter "Division of Emergency Medical Services") sent Appellant a "Notice of Opportunity for Hearing," informing Appellant that the Board was

¹ Appellant's firefighter certificate (Fire Certificate No. 136954) was also permanently revoked in Fire Case No. #2014-312-BF100. That action by the Board does not appear to be included in this appeal. However, the analysis would be the same if that action had been included in this appeal.

proposing to suspend, revoke, refuse to grant, limit, or refuse to renew his certificate to practice as an EMT, impose a fine, or issue a written reprimand to Appellant. Appellant sent a letter requesting a hearing on December 16, 2014, and the request was received on December 22, 2014.

Hearings were held in this matter before Hearing Examiner George Ellis, Esq. on March 17, 2015 and April 21, 2015. The Hearing Examiner heard the testimony of William Eberly, J. Richard Miller, John Holland, Thomas Milburn, and Melissa Vermillion. On June 15, 2015, the Hearing Examiner issued a Report and Recommendation, which also contained Findings of Fact and Conclusions of Law. The Hearing Examiner recommended that Appellant's EMT certificate be revoked.²

Appellant was served with a copy of the Report and Recommendation and given ten days to file written objections. On June 24, 2015, Appellant objected to the Recommendations made in EMS Case No. 2014-312-BE100, as well as in Fire Case No. 2014-312-BF100.

Thereafter, the Board deliberated on the Report and Recommendation of the Hearing Examiner regarding Appellant at its August 19, 2015 Board Meeting.

The Board confirmed and approved the Hearing Examiner's Findings of Fact and

² On June 15, 2015, the Hearing Examiner issued a similar Report and Recommendation in Fire Case No. 2014-312-BF100, recommending that Appellant's fire certificate also be revoked.

Conclusions of Law. However, the Board modified the Hearing Officer's Recommendation and ordered that Appellant's certificate to practice in the State of Ohio, at any level, be permanently revoked.

Arguments

Appellant contends that the Adjudication Order of the Board is not supported by reliable, probative, and substantial evidence and is not in accordance with the law. Appellant argues that the Court should overturn the decision of the Board and find that Appellant's crimes were not those which include moral turpitude, and therefore, even with his failure to report his convictions, no action of the Board was warranted or authorized. Alternatively, Appellant argues that even if the conviction did authorize action, the decision to permanently revoke Appellant's license was not consistent with prior rulings of the Board and should be reversed.

Appellee contents that the Court should affirm the Board's Order permanently revoking Appellant's certificate to practice because it is based on reliable, probative, and substantial evidence and is in accordance with law. Appellee argues that Appellant's conviction of three counts of Unlawful Sexual Conduct with a Minor is a misdemeanor conviction involving moral turpitude. Appellee argues that Appellant submitted six false applications to the Board over a seven-year period, which is reason enough to permanently revoke his certificate to practice. Appellee further argues that even if the Court determines

that Appellant's conviction is not one involving moral turpitude, Appellant has still committed fraud, misrepresentation, or deceit by submitting false applications to the Board.

Standard of Review

R.C. 119.12 provides for an appeal to the Court of Common Pleas from an order of an agency by the party adversely affected by the order. Unless as otherwise provided by law, in the hearing of the appeal, the court is confined to the record as certified to it by the agency.

R.C. 119.12 further provides that the court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record, that the order is supported by reliable, probative, and substantial evidence, and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

In *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 571, 589 N.E.2d 1303 (1992), the Supreme Court of Ohio defined these terms as follows:

"The evidence required by R.C. 119.12 can be defined as follows:

- (1) 'Reliable' evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true.
- (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue.
- (3) 'Substantial' evidence is evidence with some weight; it must have importance and value. (Footnotes omitted.)"

A common pleas court's scope of review of an administrative order includes an appraisal of all evidence and a determination of the absence or presence of the requisite quantum of evidence." *Ladd v. Ohio Counselor & Social Worker Bd.* (1991), 76 Ohio App.3d 323, 332-333, 601N.E.2d 617 (1991), citing *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111, 407 N.E.2d 1265 (1980).

"Determining whether an agency order is supported by reliable, probative, and substantial evidence is essentially a question of the presence or absence of the requisite quantum of evidence. In undertaking this hybrid form of review, the trial court must give due deference to the administrative resolution of evidentiary conflicts, but the findings of the agency are not conclusive." *The Boulevard v. Ohio Dept. of Health*, 10th Dist. No. 09AP-837, 2010-Ohio-1328, ¶7, citing *Univ. of Cincinnati v. Conrad*, at 110-111.

Likewise, the reviewing court must give deference to the agency's interpretation of its own regulations, and the technical and ethical requirements of its profession. *Ladd*, at 333; *Pons v. Ohio State Medical Bd.*, 66 Ohio St.3d 619, 621, 614 N.E.2d 748 (1993).

OAC 4765-10-03(A) provides that "[t]he board, pursuant to an adjudicatory hearing under Chapter 119. of the Revised Code, and by a vote of the majority of all members, may suspend, revoke, refuse to grant, limit, or refuse to renew any certificate issued by the board, issue a written reprimand, or impose a fine not to exceed one thousand dollars if it determines that the person committed fraud in passing the examination or committed fraud, misrepresentation, or deception in applying for or securing any certificate issued by the board."

OAC 4765-10-03(B)(2)(c) provides that "[t]he board, pursuant to an adjudicatory hearing under Chapter 119. of the Revised Code, and by a vote of the majority of all members, may suspend, revoke, refuse to grant, limit, or refuse to renew any certificate issued by the board, impose a fine not to exceed one thousand dollars, or issue a written reprimand if it finds a certificate holder has any of the following: *** (2) Conviction of, pled guilty to, had a judicial finding of guilt for, or had a judicial finding of eligibility for treatment and/or intervention in lieu of conviction for: * * * (c) A misdemeanor involving moral turpitude; * * *.

OAC 4765-10-03(D) provides that “[w]hen the board takes any disciplinary action under this rule, the board may specify that its action is permanent.”

Not every misdemeanor is a crime of moral turpitude. *Holycross v. State Board of EMS*, 163 Ohio App.3d 213, 2005-Ohio-4598, 837 N.E.2d 423, ¶10 (2d Dist.) OAC 4765-1-01(QQ) provides that “‘Moral turpitude’ means the act of baseness, vileness, or the depravity in private and social duties that one owes to society, contrary to accepted and customary rule of right and duty between human beings.”

The Sixth District Court of Appeals found that when a misdemeanor conviction could not be determined as a matter of law to involve or not to involve moral turpitude, it was permissible for the hearing examiner to consider the circumstances underlying the offense for which an EMT was convicted. *Bivins v. Ohio State Board of Emergency Medical Services*, 165 Ohio App.3d 390, 2005-Ohio-5999, 846 N.E.2d 881, ¶11.

A common pleas court, in concluding that a Board’s order was supported by reliable, probative and substantial evidence is “precluded from interfering or modifying the penalty which the agency imposed, so long as such penalty is authorized by law.”

O’Wesney v. State Bd. of Registration for Professional Engineers and Surveyors, 5th Dist. No. 2009-CA-00074, 2009-Ohio-6444, ¶72, citing *DeBlanco v. Ohio State Medical Bd.*, 78 Ohio App.3d 194, 202, 604 N.E.2d 212 (1992); *See also In re Suitability of Tucker v. Benjamin*, 5th

Dist. No. 2004CA00240, 2005-Ohio-1042, ¶14, citing *In re Appeal of Jane E.K. McCallum from Removal* (November 23, 1982), Morrow App. No. CA-600.

Review and Decision

The Court **FINDS** that Appellant admitted that he had three misdemeanor convictions for unlawful sexual conduct with a minor, which he received in 2007. (March 17, 2015 Transcript of Proceedings, Page 20).

Upon review of the evidence presented to the Hearing Examiner, the Court **FINDS** that the Hearing Examiner's conclusion that Appellant was convicted of a misdemeanor involving moral turpitude was supported by reliable, probative, and substantial evidence.

The Court further **FINDS** that Appellant included false information on six applications that he submitted to the Board. (March 17, 2015 Transcript of Proceedings, Pages 21 to 28).

The Court **FINDS** that although Appellant testified that he was relying on advice from a Buckeye Career Center instructor when he supplied the false information, there was counter-evidence from which the Hearing Examiner could conclude that Appellant's assertion was unsupported and/or not credible.

The Court **FINDS**, therefore, that the Hearing Examiner's conclusions that Appellant committed fraud, misrepresentation or deception in applying for and renewing his EMT certificate is supported by reliable, probative, and substantial evidence.

The Court **FINDS** that the Board adopted the Findings of Fact and the Conclusions of Law of the Hearing Examiner, including the Hearing Examiner's conclusions that Appellant was convicted of a misdemeanor involving moral turpitude and that Appellant committed fraud, misrepresentation, or deception when he applied for and renewed his EMT certificate.

The Court **FINDS** that the Board's decision to permanently revoke Appellant's EMT certificate was supported by reliable, probative, and substantial evidence and was in accordance with the law.

Based upon independent analysis and review of the file, the Court **FINDS**, therefore, that the Board's Adjudication Order is supported by reliable, probative, and substantial evidence and is in accordance with law.

The Court **FINDS**, therefore, that the Adjudication Order of the Ohio State Board of Emergency, Medical, Fire and Transportation Services, to permanently revoke the EMT certificate of Appellant William Eberly, should be **Affirmed**.

Orders

Based upon the foregoing, it is **ORDERED** that the Adjudication Order of the Ohio State Board of Emergency, Medical, Fire and Transportation Services, to permanently revoke the EMT certificate of Appellant William Eberly, shall be **affirmed**.

It is **ORDERED** that the Court costs shall be assessed to the Appellant, William

Eberly.

The Clerk of Courts shall close this file and remove it from the pending docket of the undersigned.

IT IS SO ORDERED.



Judge Elizabeth Lehigh Thomakos

Dated: March 9, 2016

cc: Jason Jackson, Esq.
Federico G. Barrera III, Assistant Attorney General
Court Administrator

In The Court of Common Pleas
Tuscarawas County, Ohio
General Trial Division

In the Matter of William Eberly : Case No. 2015 AA 09 0586
Plaintiff :
 : Judge Elizabeth Lehigh Thomakos
vs. :
 :
None :
Defendant : ***Notice of Filing Journal Entry***

To:

Ohio Department of Public Safety c/o Assistant Attorney General Federico G Barrera III
Executive Agencies Section
30 East Broad Street, 26th Floor
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You are hereby notified that a Court Order/Journal Entry has been filed with the
Tuscarawas County Clerk of Courts, which more fully appears on the Journal of this Court. This
Journal Entry may be a **final appealable order** in the above captioned case.

March 11, 2016



Jeanne M. Stephen
Tuscarawas County Clerk of
Common Pleas Court

By:

Susan Shaw
Deputy Clerk of Courts

