IN THE OFFICE OF THE SECRETARY OF EDUCATOIN
COMMONWEALTH OF PENNSYLVANIA

ROX-ANN REIFER,	:	
Appellant,	:	
	:	
v.	:	**Teacher Tenure Appeal**
	:	**No. 01-07**
	:	
WILLIAMSPORT AREA	:	
SCHOOL DISTRICT,	:	
Appellee	:	

Rox-Ann Reifer ("Ms. Reifer"), Appellant, appeals the decision of the Board of School Directors ("Board") of the Williamsport Area School District ("District"), terminating her employment with the District.

Findings of Fact

1. Ms. Reifer was employed by the Colonial Intermediate Unit #20 (the "IU"), from August 2001 until August 2004. (Exh. A-5).[1]

2. By letter dated February 25, 2004, the IU notified Ms. Reifer that the IU's Board of School Directors would hold a hearing on March 11, 2004 to determine whether the IU should dismiss Ms. Reifer from her employment with the IU. (Exh. Board 1; Exh. A-1).

3. In March 2004, Ms. Reifer hired Donald Russo, Esquire, to represent her when the IU scheduled the hearing to determine whether she should be terminated from her employment with the IU. (N.T. 3/27/07 p. 94).

4. At Ms. Reifer's request, the hearing was rescheduled and eventually conducted on July 8, 2004. (Exh. Board 1).

[1] Exh. refers to exhibits admitted into evidence by the Board at its hearings on March 6 and March 27, 2007.

5. Mr. Russo sent a letter to the IU on July 5, 2004 advising that neither he nor Ms. Reifer would attend the hearing on July 8, 2004 and that Ms. Reifer intended to pursue every legal and equitable remedy in federal district court regarding her rights under the Family and Medical Leave Act and the Americans with Disabilities Act. (Exh. A-8).

6. During the time of the IU's termination hearing, Mr. Russo had begun the process of filing a discrimination claim on behalf of Ms. Reifer, which eventually resulted in the filing of a lawsuit in federal court. (N.T. 3/6/07, pp. 94-98; 3/27/07, p. 97).

7. Mr. Russo advised Ms. Reifer that he believed her termination from employment by the IU was a discriminatory discharge and that if the federal judge determined it to be a discriminatory discharge, he could reinstate her. (N.T. 3/6/07, pp. 99-103; 3/27/07, pp. 97-98).

8. Mr. Russo advised Ms. Reifer that he believed there was a strong possibility that the court would "wipe the slate clean" but he never discussed a specific job application with Ms. Reifer. (N.T. 3/6/07, pp. 103-04).

9. On August 25, 2004, the IU Board of Directors issued an adjudication by which it removed Ms. Reifer from her employment with the IU. (Exh. Board 1; Exh. A-2; Exh. A-3).

10. By letter dated August 26, 2004, the IU Board of Directors notified Ms. Reifer that it had terminated her employment with the IU, effective August 25, 2004. (Exh. Board 1; Exh. A-4).

11. In September 2003, Ms. Reifer was involved in a work-related accident and had not returned to work at the IU when the Board terminated her employment on August 26, 2004. (N.T. 3/27/07, pp. 86-87).

12. In May 2005, Ms. Reifer settled her workers' compensation claim against the IU, which included signing a Resignation Agreement on May 5, 2005. (N.T. 3/27/07, pp. 98-99; Exh. Reifer 1).

13. The Resignation Agreement stated that as consideration for settling the workers' compensation claim and being paid a lump sum, Ms. Reifer resigned from her employment with the IU, Ms. Reifer gave up her rights for re-employment with the IU in any capacity, and Ms. Reifer agreed not to seek re-employment with the IU or any of its agencies. (Exh. Reifer 1).

14. In June 2005, Ms. Reifer completed an application for employment with the District. (N.T. 3/27/07, p. 100; Exh. A-5).

15. On the application, Ms. Reifer responded "no" to the following question:

Within the last ten years, have you been fired from any job for any reason?

16. It stated on the application below this, and other questions, that if you answered "yes" to any of the above questions, you should provide a detailed explanation on a separate sheet of paper, including dates, and attach it to the application. (Exh. A-5).

17. On the application, Ms. Reifer stated that the reason for leaving her employment at the IU was "relocated to Bloomsburg, PA." (Exh. A-5).

18. Ms. Reifer moved to Bloomsburg in May 2004. Ms. Reifer and her husband were looking for property in proximity to Interstate 80 due to her husband's employment and to Ms. Reifer's employment at the IU, and based on their criteria, they found a house in Bloomsburg. (N.T. 3/27/07, p. 87).

19. Ms. Reifer began her employment with the District on August 16, 2005. (N.T. 3/27/07, p. 105).

20. In December 2006, a District employee located a Memorandum and Order issued by the United States District Court, Middle District of Pennsylvania on November 7, 2006, captioned Rox-Ann Reifer versus Colonial Intermediate Unit 20. (N.T. 3/27/07, p. 8; Exh. A-6).

21. The Court stated in the Memorandum and Order that the IU had terminated Ms. Reifer on August 25, 2004. (Exh. A-6).

22. On December 16, 2006, the District notified Ms. Reifer that she was suspended without pay, effective December 18, 2006, because the administration believed Ms. Reifer provided false information to the District on her application for employment and the administration believed Ms. Reifer had been terminated from her employment with the IU. (Exh. A-7).

23. On January 22, 2007, the District issued to Ms. Reifer a Statement of Charges and Notice of Hearing. The District stated Ms. Reifer was being charged with immorality because of the falsification of her application for employment when she answered "no" to the question whether she had been fired from a job within the last ten years, and because of answers to other questions on the application. (Exh. A-9).

24. On or about January 25, 2007, Ms. Reifer appealed a notice of determination issued by the Unemployment Compensation Service Center on January 12, 2007, that denied Ms. Reifer unemployment benefits during her suspension by the District. (Exh. Reifer 3). An unemployment compensation referee conducted a hearing on February 12, 2007. (Exh. Reifer 4).

25. On February 13, 2007, the unemployment compensation referee held that Ms. Reifer was entitled to unemployment compensation benefits because the District had not established that Ms. Reifer had a deliberate intent to mislead the District and had not established

that Ms. Reifer's dismissal from the IU precluded her from performing her job duties and, therefore, the District had not established willful misconduct by Ms. Reifer. (Exh. Reifer 4).

26. The only persons to testify at the unemployment compensation hearing were Ms. Reifer and Ms. Savage, the District's Director of Human Resources. (Exh. Reifer 3).

27. The District conducted hearings on March 6 and 27, 2007 regarding the District's Statement of Charges.

28. On May 15, 2007, the Board voted to approve Ms. Reifer's dismissal for the reasons set forth in the written adjudication issued the same date.

29. Ms. Reifer filed a Petition of Appeal with the Secretary of Education on June 14, 2007.

30. The Secretary appointed the undersigned as the Hearing Officer, and a hearing was conducted on August 14, 2007.

Discussion

Ms. Reifer's dismissal by the District was pursuant to Section 1122 of the Public School Code, *as amended*, 24 P.S. §11-1122, which provides in pertinent part:

> [the] only valid causes for termination of a contract heretofore or hereafter entered into with a professional employee shall be immorality; incompetency; . . . intemperance; cruelty; persistent negligence in the performance of duties; willful neglect of duties; . . . persistent and willful violation of or failure to comply with school laws of this Commonwealth (including official directives and established policy of the board of directors); on the part of the professional employe . . .

A tenured professional employee, such as Ms. Reifer, may only be dismissed for the reasons set forth in Section 1122 of the Public School Code. *Foderaro v. School District of Philadelphia,* 109 Pa. Cmwlth. 491, 494, 531 A.2d 570, 571 (1987). "It is thus apparent that the legislature intended to protect tenure except for the serious charges listed." *Lauer v. Millville Area School District,* 657 A.2d 119, 121 (Pa. Cmwlth 1995). In order to uphold Ms. Reifer's

dismissal, only one of these charges must be established. *Horton v. Jefferson County-DuBois Area Vocational Technical School,* 157 Pa. Cmwlth. 424, 429, 630 A.2d 481, 483 (1993). After hearing, and a thorough review of the record, the Secretary finds that there is sufficient competent evidence to sustain the District's dismissal of Ms. Reifer.

Immorality is defined as "a course of conduct as offends the morals of a community and is a bad example to the youth whose ideals a professional educator is supposed to foster and elevate." *Horasko v. School District of Mount Pleasant Township,* 335 Pa. 369, 372, 6 A.2d 866, 868 (1939), cert. denied, 308 U.S. 553 (1939). The District bears the burden of proving that: (1) the underlying acts that it claims constitute immorality actually occurred; (2) such conduct offends the morals of the community; and, (3) the conduct is a bad example to the youth whose ideals the educator is supposed to foster and elevate. *Palmer v. Wilson Area School District*, TTA No. 5-94.

In the instant case, the District established that the acts alleged to constitute immorality actually occurred. It is clear that the IU terminated Ms. Reifer's employment effective August 25, 2004. The IU issued an Adjudication dated August 25, 2004 stating Ms. Reifer was removed from her employment with the IU. (Exh. A-2). The meeting minutes of the IU Board of School Directors on August 25, 2004 includes approval of the Adjudication. (Exh. A-3). The Adjudication was mailed to Ms. Reifer on August 26, 2004, with a cover letter stating that the IU Board of School Directors terminated her employment with the IU effective August 25, 2004. (Exh. A-4). The above-stated facts and Exhibits A-2, A-3 and A-4 were stipulated to by counsel for Ms. Reifer and the District. (Exh. Board 1).

Ms. Reifer stated on the employment application she submitted to the District in June 2005, that she had not been fired from any job for any reason within the last ten years. (Exh. A-

5). This was not a true statement because Ms. Reifer received a cover letter and adjudication from the IU in August 2004 stating that the IU had fired her from her job with the IU and nothing happened prior to June 2005 to change the fact that Ms. Reifer had been fired. Thus, stating that she had not been fired from any job within the last ten years was not a true statement.

Ms. Reifer attempts to distort these facts by arguing that she did not have any intent to deceive the District and that she relied on the advice of her counsel, Mr. Russo, when she stated on the application that she had not been fired within the last ten years. Ms. Reifer hired Mr. Russo in March 2004 to represent her when the IU scheduled a hearing to determine whether she should be terminated from her employment with the IU. (N.T. 3/27/07, p. 94). Mr. Russo sent a letter to the IU stating that neither he nor Ms. Reifer would attend the hearing and that she would pursue every legal and equitable remedy in federal district court regarding her rights under the Family and Medical Leave Act and the Americans with Disabilities Act. (Exh. A-8).

Mr. Russo, filed a charge of discrimination with the Equal Employment Opportunity Commission alleging violations of the Americans with Disabilities Act ("ADA") because of Ms. Reifer's termination by the IU. (N.T. 3/6/07, p. 93). Mr. Russo then filed a lawsuit in federal court alleging violations of the ADA and also alleging a workers' compensation retaliation claim or wrongful discharge. (N.T. 3/6/07, p. 98). Mr. Russo advised Ms. Reifer that <u>if</u> the judge was convinced that a discriminatory discharge had taken place the judge <u>could</u> put her back to work and remove the discharge from her personnel record as if it had never happened. (N.T. 3/6/07, pp. 96-97). In June 2005, Mr. Russo knew Ms. Reifer was looking for work and that because she had been terminated she was concerned about how to explain what had happened. (N.T. 3/6/07, p. 99). Mr. Russo had discussions with Ms. Reifer about how to describe what happened to her and he called her firing a discriminatory discharge and said that <u>if</u> a federal judge determined it

was a discriminatory discharge the judge could reinstate her. Mr. Russo did not have discussions about a specific job application or a specific question on an application.[2] (N.T. 3/6/07, pp. 99, 103-04).

Although Mr. Russo believed very strongly that Ms. Reifer's termination by the IU was a discriminatory discharge and conveyed his belief to Ms. Reifer, it did not change the fact that Ms. Reifer had been fired by the IU and that Ms. Reifer knew that she had been fired by the IU. Although Ms. Reifer had filed a lawsuit alleging that her termination by the IU was a wrongful discharge, filing the lawsuit did not change the fact that she had been fired. Nor did Mr. Russo's belief that her termination was a wrongful discharge and that it would be overturned by a judge change the fact that Ms. Reifer had been terminated. Unless, and until, a judge ruled that her termination was a wrongful discharge and overturned the termination, Ms. Reifer could not truthfully state that she had not been terminated within the last ten years. Thus, even if Mr. Russo told Ms. Reifer to answer "no" to the question on the application about whether she had been fired, her reliance on such advice[3] was not reasonable because she knew she had been fired and she knew that a judge had not ruled on her pending lawsuit.[4]

---

[2] Ms. Reifer attempts to support her argument that she relied on the advice of her counsel when she answered "no" to the question about whether she had ever been fired by having her mother, Ms. Knorr, testify about Ms. Reifer's conversation with Mr. Russo. Ms. Knorr testified that she recalled Ms. Reifer reading to Mr. Russo the question on the application asking whether she was fired within the last ten years and that she recalled Ms. Reifer saying the word "no" during the conversation. However, Ms. Knorr also testified that she could not hear what Mr. Russo was telling Ms. Reifer. (N.T. 3/27/07, p. 40). Thus, Ms. Knorr's testimony carries little weight because she did not have personal knowledge that Ms. Reifer was actually talking to Mr. Russo because she could only hear Ms. Reifer' part of the conversation. Thus, even if Ms. Reifer read the specific question to Mr. Russo, Ms. Knorr does not have personal knowledge of what Mr. Russo told Ms. Reifer.

[3] Ms. Reifer testified that she read the specific question to Mr. Russo and that he said she could put "no" on the application because there was pending litigation, the litigation was going to ultimately reinstate her to her previous position with the IU and that it wasn't a termination but a wrongful discharge. (N.T. 3/27/07, p. 101). The truth of that testimony is questionable because Mr. Russo would clearly know that unless, and until, a judge ruled on the pending lawsuit and ruled in favor of Ms. Reifer, the fact that the IU terminated her had not changed.

[4] For support of her argument that because she relied on the advice of her counsel she cannot be found to have intended to deceive the District, Ms. Reifer cites to a case where an individual relied on the advice of the supervisor of his conduct while participating in the Accelerated Rehabilitation Disposition ("ARD") program and stated on an employment application that he had not been arrested. *Sun Shipbuilding & Dry Dock Co. v. Unemployment Compensation Board of Review,* 35 Pa. Cmwlth. 275, 385 A.2d 1047(1978). The individual had, in fact, been

Not only does Ms. Reifer argue that she relied on advice of counsel, she further argues that she was confused about whether she was fired because she signed a resignation letter when she settled her workers' compensation claim. (Exh. Reifer 1). The resignation letter stated not only that she resigned from the IU but that she would also not have any rights of re-employment with the IU and would not seek re-employment with the IU or any of its agencies. (Exh. Reifer 1). The attorney representing the workers' compensation carrier for the IU, Mr. Woytek, testified that asking for a resignation letter is a matter of course in workers' compensation proceedings. He further stated that insurance carriers typically request that he obtain a resignation as part of any compromise and release settlement, and that the claims adjustor requested a resignation in Ms. Reifer's case. (N.T. 3/27/07, p. 50). Although Ms. Reifer might not have known that seeking a resignation letter was common practice in the workers' compensation area, she still knew that she had been terminated in August 2004 and that a judge had not ruled on her pending lawsuit so her termination by the IU had not changed. Thus, little weight is given to her argument that she was confused about whether she had been terminated by the IU.

Another fact that refutes Ms. Reifer's argument that she was confused about whether she was terminated by the IU is found on the employment application Ms. Reifer submitted to the District. On the application, Ms. Reifer stated that her employment with the IU was from August 2001- August 2004. (Exh. A-5). August 2004 is when Ms. Reifer was fired by the IU. During a

---

arrested previously. However, he had successfully completed the ARD program and the charges against him had been dropped. Thus, his reliance on his supervisor was reasonable since he knew the charges against him had been dropped. In addition, in the unemployment compensation arena, case law provides that any false statements on an employment application should concern matters material to the employment before the false statements should disqualify the individual from benefits. Thus, this is clearly distinguishable from Ms. Reifer's case. When Ms. Reifer provided false information on her employment application she knew she had been fired and knew that a court had not yet overturned her termination. In the *Sun Shipbuilding* case, the charges had been dropped against the individual when he stated he had not been arrested. In addition, case law under the Public School Code, pertaining to lying and immorality, does not require that the false information concern matters material to the employment before the false statements should constitute immorality.

workers' compensation hearing on February 12, 2007, Ms. Reifer stated that she put her last date of employment with the IU as August 2004 because that was when her employment with the IU ended. (Exh., Reifer 3, p. 22). If Ms. Reifer did not believe she had been fired by the IU in August 2004 because she signed a resignation letter in May 2005, she would not have stated that her employment with the IU ended in August 2004.

Ms. Reifer clearly knew that the IU fired her in August 2004 and there was nothing that changed that termination as of June 2005 when Ms. Reifer submitted her application for employment to the District. Ms. Reifer's arguments that she relied on the advice of counsel and that she was confused by having signed a resignation letter are not persuasive. Even if Ms. Reifer's counsel had told her to answer "no" to the question and if she had relied on that advice, it was not a reasonable reliance because she knew that she had been fired in August 2004 and nothing had changed that fact when she applied to the District for employment. The honest answer to the question about whether she had been fired within the last ten years was "yes". Ms. Reifer should have answered the question honestly and, as the application directions stated, she should have explained about her termination and that there was a pending lawsuit against the IU in which she alleged that her discharge was discriminatory and that it should be overturned.

Ms. Reifer also argues that the unemployment compensation determination issued January 12, 2007 regarding Ms. Reifer's request for unemployment compensation during her suspension from the District is relevant to the appeal before the Secretary and persuasive on the issue of intent. For purposes of unemployment compensation, when an employer dismisses an employee as a result of misrepresentation on the job application, the employer must establish that the misrepresentation was deliberate, and material to the employee's qualifications for the job. The unemployment compensation referee in Ms. Reifer's case found that the employer had not

established a deliberate intent to mislead the employer and did not establish that Ms. Reifer's dismissal from the IU precluded her from performing her job duties. (Exh. Reifer 4).

However, unemployment compensation hearings are designed to be fast and informal, and have negligible economic consequences. *Rue v. K-Mart Corp.*, 522 Pa. 13, 21, 713 A.2d 82, 86 (1998). Whether Ms. Reifer's conduct constitutes willful misconduct, as those terms are defined for purposes of determining unemployment compensation claims, is different than whether her conduct constitutes immorality, as that term is defined for purposes of dismissal of professional employees under the Public School Code. The Unemployment Compensation Law and the Public School Code are distinct acts advancing different policies. The Unemployment Compensation Law calls for the compulsory "setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own." See, 43 P.S. §752. The Public School Code regulates the employment of professional employees and identifies the valid or "just cause" reasons by which professional employees may be terminated. See, 24 P.S. §11-1122. Therefore, the findings by the unemployment compensation referee are not relevant to the proceedings before the Board or the Secretary. *See, Morrison v. Department of Corrections,* 659 A.2d 620 (Pa. Cmwlth. 1995).

Even if the unemployment compensation referee's decision would be relevant to the appeal before the Secretary, it would not be binding on the Secretary, as Ms. Reifer admits in her brief. However, Ms. Reifer also argues that the unemployment compensation referee's finding should be persuasive evidence that Ms. Reifer did not intend to deceive the District when she stated on her application that she had not been fired within the last ten years.

Determining willful misconduct for purposes of deciding whether Ms. Reifer should receive unemployment compensation is not the same as determining whether Ms. Reifer's

actions constitute immorality under the Public School Code. The unemployment compensation referee decided, for purposes of determining whether Ms. Reifer was entitled to unemployment compensation, that the District had not established a deliberate intent to mislead the employer and had not established that Ms. Reifer's dismissal from the IU precluded her from performing her job duties.

However, as stated in another teacher tenure appeal, "[i]ntent is not an element of the District's burden with respect to either immorality or persistent negligence." *Lenker v. East Pennsboro School District,* TTA No. 10-90, p. 11 (1995). Thus, to find that Ms. Reifer's conduct constitutes immorality, the Secretary does not have to find that she intended to deceive the District. However, even if, as Ms. Reifer alleges, the District had to prove that Ms. Reifer intended to deceive the District with her answer, the School Code "establishes the Secretary of Education as the ultimate fact finder in cases of this nature and with this status goes the power to determine the credibility of witnesses, the weight of their testimony and the inferences to be drawn therefrom." *Belasco v. Board of Public Education of School District of Pittsburgh*, 510 A.2d 337, 342, 510 Pa. 504, 514 (1986). Thus, the referee's finding does not prevent the Secretary from determining that, under the Public School Code, Ms. Reifer lied when she stated on her employment application that she had not been fired within the last ten years and that she intended to deceive the District. Even if the unemployment compensation referee's decision was relevant, it is not binding on the Secretary, nor is it persuasive, because the referee did not hear all of the testimony that was presented to the Board and that is before the Secretary. The referee did not hear Mr. Russo's testimony that he did not advise Ms. Reifer to answer "no" to the question on the District's application about whether she had been terminated within the last ten years. Thus, the referee's decision is not relevant, binding or persuasive.

Further evidence that Ms. Reifer did not answer questions on the application honestly and intended to deceive the District is that she stated on the application that her reason for leaving the IU was "relocated to Bloomsburg." (Exh. A-5). Ms. Reifer stated at the hearing before the Board that she and her husband were looking for property in proximity to Interstate 80 due to her husband's employment and her employment at the IU. Based on their criteria, they found a house in Bloomsburg and moved there in May 2004. (N.T. 3/27/07, p. 87). In May 2004, Ms. Reifer still was still employed by the IU. So it is true that Ms. Reifer "relocated to Bloomsburg" but it is not true that the relocation to Bloomsburg was the "reason for leaving" the IU. Thus, it is reasonable to infer from these facts and Ms. Reifer's actions that she intended to deceive the District about why she no longer worked at the IU.

Thus, the District proved that the underlying acts that it claims constitute immorality actually occurred.

Deciding whether conduct offends the morals of a community is a legal determination. The general rule requires that the District present direct evidence or evidence from which the Secretary can infer that Ms. Reifer's conduct offended the morals of the community. *Palmer v. Wilson Area School District,* TTA No. 5-94. If there are insufficient facts from which the Secretary can determine or infer whether the conduct offends the morals of the community, no legal determination can be made on the issues of immorality. *Id.*

However, there are limited exceptions to this general rule. There is some conduct that is so egregious that its immoral nature transcends geographic or community boundaries. *Id.* Even in the absence of evidence of community standards, courts have expressed a willingness to review legal precedent to determine whether similar conduct has been adjudicated to be immorality. Previous courts that have examined lying by a professional employee to his or her

employer have consistently held that such conduct constitutes immorality. *See, Bethel Park v. Krall,* 67 Pa. Cmwlth. 143, 445 A.2d 1377 (1982), *certiorari denied* 464 U.S. 851 (1983); *Balog v. McKeesport Area School District,* 86 Pa. Cmwlth. 132, 484 A.2d 198 (1984); *Riverview School District v. Riverview Education Association,* 162 Pa. Cmwlth. 644, 639 A.2d 974, *appeal denied* 540 Pa. 588, 655 A.2d 518 (1994); *Appeal of Batrus,* 148 Pa. Super. 587, 26 A.2d 121 (1942).

There are sufficient facts to prove that Ms. Reifer lied when she stated on the employment application she submitted to the District that she had not been fired from any job for any reason within the last ten years. Thus, Ms. Reifer's conduct constitutes immorality and her dismissal by the District was justified.

Accordingly, the following Order is entered:

IN THE OFFICE OF THE SECRETARY OF EDUCATOIN
COMMONWEALTH OF PENNSYLVANIA

ROX-ANN REIFER,	:	
Appellant,	:	
	:	
v.	:	**Teacher Tenure Appeal**
	:	**No. 01-07**
	:	
WILLIAMSPORT AREA	:	
SCHOOL DISTRICT,	:	
Appellee	:	

ORDER

AND NOW, this 27th day of September, 2007, it is hereby ordered and decreed that the appeal of Rox-Ann Reifer is denied and the decision of the Board of School Directors of the Williamsport Area School District to dismiss Rox-Ann Reifer from employment is affirmed.

Gerald L. Zahorchak, D.Ed.
Secretary of Education

Date Mailed: September 27, 2007