

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1068-21**

**IN THE MATTER OF THE
REVOCATION OF THE
CERTIFICATES OF
LESLEY ETHERIDGE BY
THE STATE BOARD OF
EXAMINERS.**

Argued June 7, 2023 – Decided July 17, 2023

Before Judges Accurso, Vernoia, and Natali.

On appeal from the New Jersey Commissioner of Education, Docket No. 5-4/21A.

Lesley Etheridge, appellant, argued the cause pro se.

Colin Klika, Deputy Attorney General, argued the cause for respondent New Jersey Commissioner of Education (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Colin Klika, on the brief).

PER CURIAM

Lesley Etheridge appeals from a New Jersey Commissioner of Education (the Commissioner) final agency decision affirming an administrative law

judge's (ALJ) determination Etheridge is collaterally estopped by an arbitrator's award issued after a tenure charge hearing under the Teacher Effectiveness and Accountability for the Children of New Jersey statute (TEACHNJ), N.J.S.A. 18A:6-117 to -129, from challenging the Commissioner's determination her teaching certificates should be revoked. We have reviewed the record presented to the Commissioner, the parties' arguments, and the applicable legal principles.¹ We affirm the Commissioner's decision because it is supported by the evidence and Etheridge makes no showing it is arbitrary, capricious, or unreasonable.

I.

In 2015, the Passaic County Vocational School District (the District) employed Etheridge as a tenured teacher. At that time, Etheridge held a New Jersey Department of Education "Teacher of Electronic Technology Certificate of Eligibility and Teacher of Electronic Technology Standard Certificate."

In April 2015, the District filed twenty-three tenure charges against Etheridge with the Commissioner. One of the charges alleged inefficiency in the performance of Etheridge's teaching responsibilities under TEACHNJ. The

¹ In accordance with our July 11, 2023 order denying Etheridge's post-oral argument motion for additional "rebuttal oral argument," we have also considered the arguments Etheridge submitted in support of her motion.

twenty-two other charges alleged Etheridge engaged in various actions constituting conduct unbecoming a teacher. The District dismissed one of the unbecoming conduct charges, and the Commissioner referred the remaining twenty-two charges to an arbitrator for disposition. See N.J.S.A. 18A:6-16 (providing where the Commissioner determines filed tenure charges are "sufficient to warrant dismissal or reduction in salary of the person charged," the Commissioner "shall refer the case to an arbitrator pursuant to" N.J.S.A. 18A:6-17.1); see also N.J.S.A. 18A:6-17.1 (describing generally the arbitration process for the disposition of tenure charges).

The arbitrator conducted a hearing of approximately twenty-five hours over three days. Etheridge appeared as a self-represented litigant. Counsel appeared on the District's behalf. Etheridge cross-examined each of the District's four witnesses. Etheridge did not present any witnesses and opted not to testify.

The arbitrator issued a detailed written opinion, noting "[t]he parties were afforded a full and fair opportunity to present evidence" during the hearing. The arbitrator further noted "[b]riefs were filed by both parties," and the parties agreed to admit certain documents, including Etheridge's "previous grievances and formal complaints."

The arbitrator sustained each of the charges against Etheridge. The arbitrator concluded the evidence established Etheridge was inefficient as a teacher during the 2014-2015 school year as measured against the District's established evaluation rubric under TEACHNJ. The arbitrator detailed the evidence establishing the District's numerous evaluations of Etheridge under the rubric, her inefficiencies, and her ongoing resistance to the District's offers of assistance and guidance to assist her in improving her performance.

The arbitrator sustained each of the twenty-one charges of conduct unbecoming a teacher. The arbitrator detailed the charges, and found the record included "substantial evidence supporting" each of them. The charges included conduct unbecoming a teacher by: "falsif[ying] grades and engag[ing] in inappropriate grading practices"; failing to report to teaching assignments; leaving students unattended; leaving the school campus without permission or notification; failing to complete lesson plans; and insubordination by failing to provide lesson plans as directed by her supervisor. The arbitrator concluded that, "[v]iewed in their entirety," the claims and evidence against Etheridge "demonstrate[d] a consistent pattern of insubordinate conduct and behavior inappropriate for a tenured teacher."

The arbitrator also rejected Etheridge's claim "the tenure charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by state or federal law, or other conduct prohibited by . . . law." The arbitrator determined Etheridge "adduced no compelling evidence to substantiate her accusation[s]." The arbitrator further found "the [D]istrict carefully documented [Etheridge's] pedagogical failings, used a wide variety of qualified evaluators, and accorded her opportunities to correct the deficiencies[,] [b]ut she did not take advantage of them, often refusing even to respond to observation reports, evaluations[,] or suggestions for improvement."

As noted, the arbitrator sustained the tenure charges, finding they warranted loss of tenure and dismissal from the District. The arbitrator observed the "disastrous outcome" for Etheridge "seems to have been a consequence of [her] displacing blame onto others and ignoring constructive criticism."

Almost two years later, on March 6, 2018, the New Jersey State Board of Examiners (Board of Examiners) filed an application with the New Jersey Department of Education requiring Etheridge show cause why her two teaching certificates should not be revoked "as a result of the unbecoming

conduct proven in the tenure proceeding." The application detailed the history of the previously filed tenure charges, explained the charges had been decided by an arbitrator, and noted the arbitrator's findings Etheridge committed numerous acts of conduct unbecoming a teacher. The application further stated that as a result of arbitrator's decision on the tenure charges, Etheridge had lost her teaching position in the District.

The Commissioner referred the matter to the Office of Administrative Law as a contested case. The Office of Administrative Law assigned the case to an ALJ. The Board of Examiners subsequently filed a motion for partial summary decision, arguing Etheridge was collaterally estopped from relitigating whether she engaged in various conduct unbecoming a teacher while employed by the District because that issue had been fully litigated in the arbitration proceeding on the tenure charges. Etheridge filed briefs opposing the Board of Examiners' motion.

In a detailed and thorough written order granting the motion for partial summary decision, the ALJ detailed the issues and evidence presented to the arbitrator, as well as the arbitrator's findings Etheridge engaged in numerous and varied conduct unbecoming a teacher. The ALJ also reviewed the legal principles attendant to application of collateral estoppel to bar re-litigation of

legal claims, and concluded that because Etheridge was afforded the opportunity to fully participate in the litigation before the arbitrator on the claims of conduct unbecoming a teacher identical to those presented by the Board of Examiners' order to show cause, Etheridge was collaterally estopped from relitigating the claims in the present proceeding.

The ALJ therefore granted the Board of Examiners' motion for a partial summary decision that Etheridge engaged in conduct unbecoming a teacher as determined by the arbitrator. The ALJ also determined, however, Etheridge was entitled to a hearing as to whether a sanction less than revocation of her two teaching certificates was appropriate.

The ALJ subsequently conducted an evidentiary hearing as to whether the unbecoming conduct charges the arbitrator determined Etheridge committed warranted a revocation of her teaching certificates. Etheridge appeared pro se at the hearing and called her husband, Rodney Etheridge; a former colleague at the District, Lucinda Eason; her friend of "over forty years," Carolyn Williams; and her mother, Izetta Gist, as witnesses.

In a written Initial Decision, the ALJ noted Etheridge "expressed no remorse or even an explanation for her actions" at the evidentiary hearing, continued to blame the District for her professional shortcomings, and

attempted to place blame "for the grade falsification charges" on her husband. The ALJ gave little weight to the testimony of Etheridge's husband, her mother, and her friend, finding they were not impartial. The ALJ found Etheridge's former colleague, Eason, credible but determined she "offered no complimentary testimony" concerning Etheridge.

The ALJ further found it likely Etheridge would continue to demonstrate a "pattern of insubordinate and unprofessional conduct" if her teaching certificates were maintained and she regained employment as a teacher. The ALJ concluded Etheridge's conduct was "sufficiently flagrant to warrant the ultimate sanction of revocation of her teaching certificates."

Etheridge filed exceptions to the ALJ's decision with the Board of Examiners. Etheridge also appeared before the Board of Examiners and offered an oral statement. The Board of Examiners voted to adopt the ALJ's findings and recommendation to revoke Etheridge's teaching certificates, and issued an April 1, 2021 written decision to that effect.

Etheridge appealed from the Board of Examiners' decision. On October 28, 2021, the Acting Commissioner of the Department of Education issued a final agency decision. The Acting Commissioner found "the record adequately supports the Board[] [of Examiners'] determination that [Etheridge] engaged in

unbecoming conduct and that revocation of her teaching certificates is the appropriate penalty." The Acting Commissioner noted Etheridge's arguments challenged the arbitrator's findings but concluded the doctrine of collateral estoppel barred Etheridge "from relitigating the issue of unbecoming conduct" because she "had a full and fair opportunity to contest those charges during the tenure proceeding."

The Acting Commissioner also addressed Etheridge's claim that a member of the Board of Examiners, Melissa Pearce, should have recused herself from the Board's review of the ALJ's decision because Pearce previously served as the executive superintendent of the Passaic County Vocational School, where Etheridge had been employed. The Acting Commissioner explained Etheridge's employment at the Passaic County Vocational School ended in 2015, and Pearce did not become the executive superintendent of the school until three years later in 2018. The Acting Commissioner further noted Pearce "would have had no involvement in the filing or litigation of the tenure charges," and the Passaic County Vocational School is not a party to the proceedings brought by the Board of Examiners. Thus, the Acting Commissioner determined Pearce "was not required to recuse herself from the" Board of Examiners' vote.

The Acting Commissioner determined Etheridge failed to demonstrate the Board of Examiners' decision to revoke her teaching certificates based on the unbecoming conduct established during the tenure hearing was arbitrary, capricious, or unreasonable. The Acting Commissioner affirmed the Board of Examiners' decision revoking Etheridge's "Teacher of Electronic Technology Certificate of Eligibility and Teacher of Electronic Technology Standard Certificate." This appeal followed.

In her pro se brief on appeal, Etheridge presents the following arguments for our consideration:

POINT 1

COLLATERAL V. PROMISSORY DUE
PROCESS [THE ALJ] MADE AN ERROR IN
APPLYING COLLATERAL ESTOPPEL
DOCTRINE THEREBY OVERRULING THE
BOARD OF EXAMINERS['] PROMISE FOR A
HEARING BEFORE AN [ALJ] AND
DENYING [ETHERIDGE] DUE PROCESS.

POINT 2

[THE ALJ] MADE AN ERROR WHEN SHE
FAILED TO ADDRESS THE MATERIAL OF
FACTS IN DISPUTE CONCERNING: THE
RETALIATION TIMELINE-
WHISTLEBLOWER V. GRADE
FALSIFICATION

POINT 3

LACK QUORUM, CONFLICT OF INTEREST
VOTE DELAYED UNTIL APPOINTMENT:
MELISSA PEARCE, BOARD MEMBER ON
BOTH [THE DISTRICT] AND BOARD OF
EXAMINERS DURING THE TRANSITION
FROM [THE DISTRICT] TO BOARD OF
EXAMINERS 2017-18; AND DURING THE
BOARD OF EXAMINERS['] VOTE TO
REVOKE THE [CERTIFICATES] APRIL 2021.

POINT 4

VERIFIED CHARGES V. CERTIFIED
CHARGES: [THE ALJ] MADE AN ERROR
WHEN SHE STATED THE DISTRICT
([PASSAIC COUNTY VOCATIONAL
SCHOOL]) INSTEAD OF THE SCHOOL
([PASSAIC COUNTY TECHNICAL
INSTITUTE]), ON OR ABOUT APRIL 23,
2015, CERTIFIED, INSTEAD OF VERIFIED
TENURE CHARGES WITH THE
COMMISSIONER OF EDUCATION,
INSTEAD OF WITH [PASSAIC COUNTY
TECHNICAL INSTITUTE] SCHOOL
EMPLOYEES.

POINT 5

[THE ALJ] MADE AN ERROR WHEN SHE
STATED "SUPRISINGLY, HE (RODNEY
ETHERIDGE) TESTIFIED THAT HE, NOT
(HIS WIFE) . . . ETHERIDGE, WAS
RESPONSIBLE FOR THE GRADE
FALSIFICATION CHARGE,

"I GAVE LITTLE WEIGHT TO THE
TESTIMONY PROVIDED BY HER
HUSBAND"

"A HEARING ALLOWS THE CERTIFICATE
HOLDER TO DEMONSTRATE FACTS OF
CIRCUMSTANCES THAT MIGHT COUNTER
THE CHARGES"
POINT 6²

[THE ALJ] MADE AN ERROR WHEN SHE
STATED "SUPRISINGLY, HE (RODNEY
ETHERIDGE) TESTIFIED THAT HE, NOT
(HIS WIFE) . . . ETHERIDGE, WAS
RESPONSIBLE FOR THE GRADE
FALSIFICATION CHARGE,

"I GAVE LITTLE WEIGHT TO THE
TESTIMONY PROVIDED BY HER
HUSBAND"

"A HEARING ALLOWS THE CERTIFICATE
HOLDER TO DEMONSTRATE FACTS OF
CIRCUMSTANCES THAT MIGHT COUNTER
THE CHARGES"

II.

"Our review of administrative agency action is limited," Russo v. Bd. of
Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011), but we are not
"relegated to a mere rubber-stamp of agency action," Williams v. Dep't of

² Point 6 in Etheridge's merits brief is misnumbered as "Point 4." We note the point heading for Point 6 is identical to the point heading for Point 5.

Corrs., 330 N.J. Super. 197, 204 (App. Div. 2000). Rather, we engage in a "careful and principled" examination of the agency's findings. Ibid. (quoting Mayflower Sec. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

A reviewing "court ordinarily should not disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). In the absence of such a showing, we accord substantial deference to an agency's fact-finding and legal conclusions, recognizing "the agency's 'expertise and superior knowledge of a particular field.'" Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). It is generally not the function of a reviewing court "to weigh the evidence, to determine the credibility of witnesses, to draw inferences and conclusions from the evidence, and to resolve conflicts therein." In re Grossman, 127 N.J. Super. 13, 23 (App. Div. 1974).

"The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the

administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006). Where an agency decides an issue of law, its "decision do[es] not carry a presumption of validity and it is for this court to decide whether those decisions are in accord with the law." Parsippany-Troy Hills Educ. Ass'n v. Bd. of Educ., 188 N.J. Super. 161, 165 (App. Div. 1983).

Etheridge contends the ALJ, and by adoption the Acting Commissioner of Education, erred by determining the doctrine of collateral estoppel barred her from relitigating before the Board of Examiners the charges she engaged in conduct unbecoming a teacher that were decided during the tenure hearing before the arbitrator. She argues application of the doctrine of collateral estoppel to preclude her from litigating the unbecoming conduct claims deprived her of a fair hearing in the proceedings during which the Board of Examiners sought to revoke her teaching certificates. Etheridge further asserts we should "apply the promissory [estoppel] doctrine and allow" the charges brought by the Board of Examiners "to be heard before a judge."

We find no error in the ALJ's application of the doctrine of collateral estoppel to preclude Etheridge from relitigating the identical unbecoming conduct charges that were fully litigated before the arbitrator during the tenure proceedings. Collateral estoppel is an equitable principle which provides

"[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, [then] the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Winters v. N. Hudson Reg'l Fire & Rescue, 212 N.J. 67, 85 (2012) (first alteration in original) (quoting Restatement (Second) of Judgments § 27 (1982)).

The doctrine facilitates society's interest in "finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion[,] and uncertainty; and basic fairness." Ibid. (quoting Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 522 (2006)). Moreover, "arbitration awards may be given collateral estoppel effect in subsequent judicial proceedings." Barker v. Brinegar, 346 N.J. Super. 558, 565 (App. Div. 2002) (quoting Konieczny v. Micciche, 305 N.J. Super. 375, 384 (App. Div. 1997)).

The collateral estoppel doctrine applies if:

(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

[Winters, 212 N.J. at 85 (quoting Olivieri, 186 N.J. at 521).]

Even if all the elements are met, a request to apply the collateral estoppel doctrine may be denied if its application would be unfair. Fama v. Yi, 359 N.J. Super. 353, 359 (App. Div. 2003). Prior to any determination to apply the doctrine, courts must consider "whether the party against whom it is asserted could not obtain review of the prior judgment, whether the quality or extent of the two proceedings was different, and whether it was not foreseeable at the time of the prior action that the issue would arise in subsequent litigation." Ibid. (citing Pace v. Kuchinsky, 347 N.J. Super. 202, 216 (App. Div. 2002)). Courts should also consider "whether new evidence has become available which could likely lead to a different result." Ibid. (citing Barker, 346 N.J. Super. at 567).

Here, the ALJ properly considered the pertinent circumstances, and correctly applied the law, in determining collateral estoppel barred Etheridge from relitigating the unbecoming conduct charges in the proceeding to revoke her teaching certificates. The identical charges were fully litigated and decided after a full and fair hearing before the arbitrator. As noted by the ALJ, Etheridge litigated the underlying facts during an "approximately 25 hour[]"

hearing before the arbitrator during which she was given "a full and fair opportunity to present evidence and argument," and, in fact, cross-examined witnesses, made arguments, and presented testimony and evidence.

Additionally, although the parties before the ALJ were not identical to the parties in the arbitration, the party against whom collateral estoppel was applied — Etheridge — was a party to the earlier proceeding before the arbitrator. See Winters, 212 N.J. at 85. Etheridge does not dispute, and the record otherwise establishes, the issues to be precluded by application of collateral estoppel in the proceeding before the ALJ — that is, Etheridge's commission of various conduct unbecoming a teacher — are identical to the issues presented before the arbitrator. See ibid.

Further, Etheridge does not dispute the identical issues were "actually litigated" during the prior arbitration proceeding, id. at 85 (quoting Olivieri, 186 N.J. at 521), determination of the issues was essential to the arbitrator's decision, and the arbitrator's decision constituted a final judgment in the tenure proceedings, see ibid. And Etheridge does not point to any consideration of unfairness, public policy, or newly available evidence that would be inconsistent with the otherwise proper application of the doctrine of collateral estoppel. See Fama, 359 N.J. Super. at 359. In sum, the record establishes

each of the elements supporting application of the doctrine of collateral estoppel, and Etheridge makes no showing to the contrary.


Etheridge's reliance on promissory estoppel is unavailing. Promissory estoppel is "a doctrine which employs equitable principles to satisfy the requirement that consideration must be given in exchange for the promise sought to be enforced." Goldfarb v. Solimine, 245 N.J. 326, 340 (2021) (quoting Raedeke v. Gibraltar Sav. & Loan Ass'n, 517 P.2d 1157, 1161 (Cal. 1974)). The principle has no application here because Etheridge does not point to any issue of "consideration" or a "promise sought to be enforced." Ibid. Her argument to the contrary is bereft of merit.

We find each of Etheridge's remaining arguments, to the extent they may be discerned from her merits and reply briefs, to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D). We note only we reject Etheridge's argument the arbitrator should have interpreted and weighed the evidence — including her husband's testimony he falsified the students' grades and Etheridge did not — differently. As we have explained, the ALJ correctly determined she is collaterally estopped from relitigating the unbecoming conduct charges that were decided by the arbitrator.

We also reject Etheridge's claims the Board of Examiners' vote to adopt the ALJ's findings and recommendation is void due to a purported lack of quorum. The contention is unsupported by a citation to any evidence. Similarly, Etheridge's claim the ALJ erred by rejecting her assertion Pearce had a disqualifying conflict of interest is untethered to any competent record evidence.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION