

STATE OF NORTH CAROLINA
COUNTY OF ALAMANCE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 EDC 00805

LIA C LONG)
Petitioner)
vs.)
NC DEPARTMENT OF PUBLIC)
INSTRUCTION)
Respondent)

FINAL DECISION

On August 24, 2012, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina. By Order dated September, 17, 2012, the undersigned ruled that Petitioner's non-teaching experience was not directly related to her area of licensure, and teaching assignment, and ordered Respondent to file a proposed Decision. Respondent filed a proposed Decision with the Office of Administrative Hearings on October 5, 2012.

APPEARANCES

For Petitioner: Lia C. Long, Pro Se
514 Oakland Drive
Burlington, NC 27215

For Respondent: Tiffany Y. Lucas
Assistant Attorney General
North Carolina Department of Justice
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ISSUE

Whether Respondent wrongfully denied Petitioner's request for salary credit for non-teaching work experience based upon her prior work experience?

APPLICABLE STATUTES AND POLICIES

N.C. Gen. Stat. §150B-23, § 115C-296
State Board of Education Policy TCP-A-006

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: None

For Respondent: 1 – 4, 9 - 27

FINDINGS OF FACT

Procedural Background

1. By letter dated November 21, 2011, Respondent denied Petitioner’s request for salary credit non-teaching work experience after determining that Petitioner’s non-teaching work experience was not “directly related” to Petitioner’s area of licensure and teaching assignment.

2. On January 20, 2012, Petitioner appealed Respondent’s decision, alleging that Respondent had otherwise substantially prejudiced her rights, acted arbitrarily or capriciously, and failed to act as required by law or rule by:

NCDPI has denied my appeal for increased pay due to previous years of work experience. I have provided more than sufficient documentation of proof that my previous work experience directly relates to the classes I teach as well as those that may be assigned to me within the Family and Consumer Science Curriculum. I feel that this decision is discriminatory based on the current budget situation and has not been given adequate consideration. Furthermore, we are currently hiring inexperienced teachers in our profession without certification and paying them on the same level as myself who has completed all course work necessary to be certified not only in my current assignments but additional areas as well:

Petitioner noted that she has 16 years of experience and earns \$1026 per month of employment. She requested “additional inco [not readable text] in back pay, bump to the BA degree 16 yr salary scale.”

Adjudicated Facts at Hearing

3. N.C. General Statute § 115C-296(a) provides, in pertinent part, as follows:

The State Board of Education shall have the entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes.

N.C. Gen. Stat. § 115C-296(a)

4. Pursuant to its statutory authority to “determine and fix the salary for each grade and type of certificate which it authorizes,” the State Board of Education (hereinafter the “SBE”) has adopted a policy, TCP-A-006, entitled “Policies related to Experience/Degree Credit for Salary Purpose.” (Resp. Exh. 1)

5. That policy recognizes that educators employed in the public schools may be awarded salary credit for past employment experience as well as for certain graduate degrees. Generally, the salary credit falls into three main categories: prior experience as a teacher, prior work experience that is non-teaching in nature, and possession of a graduate degree. (Resp. Exh. 1)

6. For salary purposes, non-teaching work experience can be credited towards an individual's total licensure experience rating on the recommendation of the designated personnel administrator of the NC LEA which has employed the individual in a professional position. (SBE policy TCP-A-006, sec, 6.20) To be eligible to receive credit for prior "non-teaching" work experience, the prior work experience must be "relevant non-teaching work experience" and meet several criteria. SBE policy TCP-A-006, sec. 6.20 defines "relevant non-teaching work experience as:

Relevant non-teaching work experience shall be defined as
Professional work experience in public or private sectors that is
**Directly related to an individual's area of licensure and work
assignment.**

(SBE policy TCP-A-006, sec, 6.20. *Emphasis added*) Such experience must also meet the following criteria:

- 1) was at least half-time (20 hours or more per week);
- 2) was completed after age 18;
- 3) did not include on-the-job training;
- 4) was paid and documented.

(SBE policy TCP-A-006, sec, 6.20)

7. In this case, Petitioner is employed by the Alamance-Burlington Public Schools as a secondary level Family and Consumer Science teacher.

8. After beginning employment in 2009, Petitioner requested non-teaching credit for fifteen years of past non-teaching work experience. At the time of her request, Petitioner was licensed in Family and Consumer Science, and her teaching assignment was in Personal Finance and Foods I.

9. Specifically, Petitioner requested non-teaching credit for her experience as a Customer Service Representative and Training Coordinator for Teleco, a communications firm; as Director of Sales and Marketing at 1st State Bank, and as an owner of a retail store, U R Invited, LLC. In her request, Petitioner correlated the objectives from the Family and Consumer Science curriculum from which she teaches to her corresponding prior experience. Petitioner attached to her request the following documents, among other things: (1) verification of her work experience at Teleco, signed by Ester Teleco Inc. President E.P. Ester, Jr.; (2) verification of her work experience at 1st State Bank by that employer; (3) a list of job responsibilities for her

Director of Sales and Marketing position at 1st State Bank from hrVillage.com; (4) self-described list of her job duties as owner of U R Invited, Inc; and (5) CPA letter who prepared federal tax returns for U R Invited, Inc. (Resp. Exh. 4)

10. A licensure specialist with Respondent reviewed Petitioner's request and information, and denied Petitioner's request based on "no direct related experience."

11. Following this initial denial, and pursuant to SBE Policy TCP-A-006, Petitioner through Alamance-Burlington Public Schools, requested a review by the Experience Credit Appeals Panel.

12. The Appeals Panel consists of fifteen professional educators, none of whom is employed by the State Board of Education or the Department of Public Instruction. The Appeals Panel was created to give another level of review in the process, and specifically, to permit teachers another opportunity to present information in an objective forum.

13. During its review of requests for credit, the Appeals Panel uses a checklist to determine if the required documentation is included in each request. (Resp. Exh. 4, p. 36)

a. In this case, the Panel thoroughly reviewed and considered the information Petitioner submitted, including a document prepared by Petitioner entitled "Verification of correlation between job responsibilities to the Family and Consumer Science NC Standard Course of Study", and job descriptions relating to Petitioner's past work experiences. One panel member participating in the review of Petitioner's case was skilled in the Family and Consumer Science area. (Vandenburgh testimony)

b. The Panel compared Petitioner's prior job descriptions with the applicable standard course of study, and considered Respondent's Exhibit 27. The Panel noted Petitioner's current teaching assignment was Personal Finance and Foods I. While the Panel saw some connections or relation between Petitioner's past work experiences and her current teaching assignment, the Panel did not find a direct connection or relation between Petitioner's prior work experience, and the subject area in which she was licensed. After deliberating, the Appeals Panel voted unanimously to deny Petitioner's request. (Vandenburgh testimony; Resp. Exh. 4, p. 36)

14. Petitioner asserted that her 6 years of experience as a Sales and Marketing Director for 1st State Bank included the responsibilities of budgeting, goal setting, and rewards, product and interior design, product and sales training, and planning and implementation of all corporate events and marketing programs. She argued that these responsibilities directly related to many areas of Family and Consumer Sciences such as Hospitality, Foods I and II, Housing and Interiors, Teen Living, and specifically her current teaching assignment of Personal Finance. For 8 years, Petitioner owned and operated U R Invited, a retail store front of children's clothing, interior design elements, age appropriate gifts and accessories for kids and adults, and products

and services for home and corporate entertaining. That business also included contract services in event planning, interior design, and corporate apparel which “directly relates” to many of the Family and Consumer Science classes, and Personal Finance. At Teleco, Petitioner’s job for 2 years involved training large groups of employees and customer how to properly use their newly purchased phone and voice mail systems, planning each training session, constructing manuals for customers to use such systems, and responding to questions on such systems. She also explained that there are teachers being paid at the same level as she, who have no degree, certification, or experience.

15. The term “directly related” as used in SBE Policy TCP-A-006, sec. 6.20, and as applied by DPI staff and the Panel members, is a term of art that is understood by the licensure staff, by members of the Appeals Panel, and by personnel administrators in the local school systems. It is defined by a “subject matter” test: Is the prior experience in a subject area that the teacher is both licensed in and assigned to teach?

16. In this case, while Petitioner’s prior work experiences were certainly helpful in her performing her current teaching duties, Petitioner’s documentation did not sufficiently show how Petitioner’s specific job duties at Teleco, 1st State Bank, and U R Invited, Inc. were directly related to Petitioner’s area of licensure, and current teaching assignment, as required in SBE Policy TCP-A-006.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has subject matter and personal jurisdiction over this contested case, and the parties received proper Notice of Hearing. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. Petitioner bears the burden of proving the claims alleged in the Petition by a preponderance of the evidence. Peace v. Employment Sec. Comm’n, 349 N.C.315, 507 S.E. 2d 272 (1988).

3. The State Board of Education has the constitutional power “to supervise and administer the free public school system and the educational funds provided for its support.” N.C. Const. art IX, § 5. This power includes the power to “regulate the grade [and] salary... of teachers.” Guthrie v. Taylor, 279 N.C. 703, 709, 185 S.E.2d 193, 198 (1971), cert. denied, 406 U.S. 920, 32 L.Ed.2d 119 (1972). The State Board has the specific duty “to certify and regulate the grade and salary of teachers and other school employees.” N.C. Gen. Stat. § 115C-12(9)a; Guthrie at 711.

4. The State Board has the statutory authority to “determine and fix the salary for each grade and type of certificate which it authorizes... .” N.C. Gen. Stat. § 115C-296(a).

5. Based upon a preponderance of the evidence presented, the intent of the State Board of Education in adopting SBE Policy TCP-A-006 was to recognize prior work experience that directly supported the subject area to which a teacher was assigned and licensed to teach.

Incidental skills or duties that are helpful in any work environment are not deemed to be directly related to the subject area in which the teacher is licensed and assigned to teach and thus are not creditable for salary purposes.

6. In reaching this determination, the undersigned relies upon the testimony of individuals with years of experience in applying the policy, and the uninterrupted interpretation of that policy over the years. The undersigned may also rely upon consistent interpretation by a State Agency of its own statutes and policies in reaching a conclusion with regard to the application of a particular policy to a given set of facts. See State v. Jones, 358 N.C. 473, 598 S.E.2d 125 (2004); Frye Regional Medical Center, Inc. v. Hunt, 350 N.C. 39, 510 S.E.2d 159 (1999).

7. In this case, Petitioner failed to meet her burden of demonstrating that Respondent has deprived her of property, or otherwise substantially prejudiced her rights and exceeded its authority, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in denying Petitioner's request for salary credit for her non-teaching work experiences.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **AFFIRMS** Respondent's decision to deny Petitioner's request for salary credit for her prior non-teaching work experiences.

NOTICE AND ORDER

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 18th day of October, 2012.

Melissa Owens Lassiter
Administrative Law Judge