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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE
Justice

PART 61

Index Number : 105552/2005
GRASSEL, RONALD
vs.
DEPARTMENT OF EDUCATION
SEQUENCE NUMBER : 007
VACATE

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed order.

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

DEC 24 2012

NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 12/5/12

HON. ANIL C. SINGH, J.S.C.
SUPREME COURT JUSTICE

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION

2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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In the Matter of the Application of

RONALD GRASSEL,

Petitioner,

against-

DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK, THE UNIVERSITY OF THE STATE OF NEW YORK, THE STATE EDUCATION DEPT., SCHOOL DISTRICT EMPLOYER-EMPLOYEE RELATIONS UNIT,

Respondent.

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DECISION AND ORDER
Index No. 105552/2005

HON. ANIL C. SINGH, J.:

Petitioner moves to vacate the Opinion and Award in a disciplinary proceeding by the Department of Education (Respondent) against Ronald Grassel (Petitioner)Grassel is seeking to return to active status as a teacher retroactive to 1997. He is pro se in this proceeding. Petitioner was represented by counsel in the underlying administrative hearing.

The Department of Education (DOE) brought charges that Ronald Grassel was insubordinate, neglected his duty, and engaged in conduct unbecoming a teacher for failure to report for scheduled medical examinations pursuant to New York State Education Law § 2568 on three separate occasions: February 9, 2011 (Specification 1), February 18, 2011 (Specification 2), and March 18, 2011 (Specification 3). The DOE alleged that this constituted just cause for disciplinary action under Education Law § 3020-a. Mr. Grassel asserted that he did not receive the letters ordering him to attend the medical examinations

until February 22, 2011, because he was in Florida at the time they arrived. Mr. Grassel did not provide any evidence to suggest that he attempted to follow the DOE's instructions as detailed in the March 9, 2011 letter or attempt to reschedule the March 18, 2011 examination. On or about March 8, 2011, prior to the scheduled March 18, 2011 medical examination, Mr. Grassel moved for an order of contempt, claiming that the DOE failed to comply with the Supreme Court of New York's December 2, 2010 Order. The court denied the petition and determined that the DOE complied with Education Law § 2568 by sending an effective letter dated 1/10/2011 directing Mr. Grassel to appear for a medical examination.

The Hearing Officer determined that:

1. The DOE's request for termination was denied;

2. Mr. Grassel was suspended without pay and such suspension would be fully satisfied upon Mr. Grassel's ordered date of reinstatement;

3. DOE was ordered to reinstate Mr. Grassel within 30 days from the date of the Opinion and Award; and

4. Mr. Grassel's request for back pay was denied.

Mr. Grassel was found guilty of Specifications 1, 2, and 3.

Petitioner's arguments include:

1. That the hearing officer was not legally assigned to the case until February 21, 2012 and that, therefore, he was not sworn before the arbitration was held.

2. Petitioner was not an employee of the Department of Education at the time the hearing was begun and that the hearing officer did not have jurisdiction because the hearing

was therefore a post-termination hearing and not authorized under the Education Law § 3020-a.

3. The charges date from 1997 and therefore the three years the DOE had in which to bring the charges had passed, and the disciplinary hearing was barred.

4. Eyesight is not a necessary requirement of working for the DOE; therefore, it cannot be a part of a medical examination.

5. The DOE never ascertained whether the petitioner could function in any capacity for the DOE and that the only justification for requiring an examination came from statements Petitioner made during a psychiatric evaluation. Petitioner asserts that these statements have no value and cannot be used as a basis to require him to submit to further medical examination.

6. Petitioner claims that the decisions of the hearing officer were not based upon fact and were irrational; therefore, the award should be vacated.

Respondents filed a cross-motion to dismiss the petition with prejudice pursuant to CPLR §§ 3211(a)(2), 3211(a)(5), 3211(a)(8), 304, 306-a, 404(a) and § 3020-a of the Education Law, on the grounds that (1) there is no valid proceeding before this Court and no valid proceeding was commenced because petitioner did not file a notice of petition and/or petition with the New York County Clerk or pay the requisite filing fee as required by CPLR §§ 304 and 306-a, and the time to commence a proceeding under Education Law § 3020-a has expired; and (2) that even if the Court were to conclude that a proceeding had been commenced, such proceeding is barred by the applicable statute of limitations set forth in

Education Law § 3020-a.

This court finds that Petitioner's arguments are without merit. Petitioner's argument that the Hearing Officer was not sworn prior to beginning the hearing is not supported by evidence. Petitioner relies upon a letter from the State Education Department which *confirms* John Woods agreement to serve as Hearing Officer. This does not, as Petitioner contends, indicate that the date of the letter is the date that Mr. Woods was legally assigned the case.

The argument that the Hearing Officer lacked jurisdiction because Petitioner was not an employee of DOE from January to October 2011 must also fail. Petitioner has provided contradictory documentation. Some, such as the letter from the Teacher's retirement system indicates that he was inactive, not terminated. Other evidence consists of work or service histories with no explanation of the abbreviations and notations thereon. Furthermore, one of the penalties sought by the DOE was Petitioner's termination. This is strong evidence that Petitioner had not been terminated previously. The background contained in the Order and Award of the Hearing Officer (Petitioner's Exhibit A) shows that the Petitioner was suspended, not terminated. The one time a Hearing Officer ordered Grassel to be terminated, should he fail to schedule and attend a medical examination, the Court vacated the termination. In total, the evidence indicates that Petitioner was suspended, not terminated. Therefore, the Hearing Officer had jurisdiction.

Petitioner's argument that the charges date from 1997 and are therefore time barred from being brought is clearly erroneous. The charges are for failure to report for scheduled medical examinations in 2011. Therefore, the charges were brought within the period of time

specified by the statute of limitations.

Petitioner's argument that eyesight is not required to work at the DOE, and is therefore not a permissible part of a § 2568 medical examination must fail. New York Education Law § 2568 allows the superintendent of schools to require that any person employed by the board of education submit to a medical examination in order to determine the mental or physical capacity of such person to perform his duties. It is possible that lack of eyesight, or diminished vision could impact the ability to perform certain duties as a teacher. Therefore, it is justifiable to require an employee to submit to a medical examination to determine their fitness for duty.

Petitioner's argument that the DOE never ascertained whether he could function in any capacity for the DOE and therefore the award must be vacated is also meritless. The disciplinary action was for failure to report to medical examinations, which would presumably determine if Petitioner is fit to perform any duties working for the DOE. The DOE has been unable to determine what, if any, position the Petitioner is fit for because the Petitioner has repeatedly refused to submit to a medical examination.

The Petitioner has failed to show that the Hearing Officer's opinion was irrational and not based upon fact. Many of the statements Petitioner relies upon are misquoted or taken out of context.

The Petitioner has failed to show that the Hearing Officer's Opinion and Award should be vacated. Therefore, there is no need to analyze Respondent's motion to dismiss.

Accordingly it is

ORDERED that Petitioner's Motion to Vacate the Hearing Officer's Opinion and Award is denied in its entirety; it is further

ORDERED the Respondent's motion to dismiss is denied as moot.

The foregoing constitutes the decision and order of the court.

Date: 12/5/12
New York, New York

Anil C. Singh