

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. M-02/17-96
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Appeal of)
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INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Family Services Division, denying his request to expunge his name from the child protection registry. The issue is whether the Department abused its discretion when it denied the petitioner's expungement request.

The petitioner filed for fair hearing on or about February 27, 2017. Telephone status conferences were held on April 3, May 4, June 9, and July 20, 2017. The following decision is based on the representations of the parties at and the documents submitted pursuant to those status conferences.

FINDINGS OF FACT

1. This case arises from the Department's substantiation of physical and verbal abuse by the petitioner of an 11-year-old boy on or about September 29, 2009. The petitioner was 25 at the time.

2. The incident occurred while the petitioner was employed as the boy's "behavioral interventionist" at a youth program in Washington County, Vermont. The petitioner was substantiated for becoming angry at the boy, biting him on the arm causing an observable injury, and using harsh and inappropriate language with him. The petitioner was fired from his job as a result of the incident, and he did not appeal his substantiation.

3. In November 2016, following the petitioner's request for expungement, the petitioner met by phone with the director of the Department's Registry Review Unit. In a decision dated January 25, 2017, the Department denied the petitioner's request for expungement, which led to this appeal.

4. The Department's review decision noted that the incident had occurred seven years ago and that the Department had no record of any other incidents involving the petitioner. However, the reviewer noted that, despite agreeing to and being afforded additional time, the petitioner had not submitted any documentation of subsequent work and education nor any character references.

5. The review decision documented the six statutory factors (see *infra*) as follows:

- a. Nature of Substantiation. Reference to the details of the September 2009 incident.
- b. Number of Substantiations. Only one.
- c. Time elapsed since the substantiation. 7 years.
- d. Circumstances that would indicate a similar incident is unlikely. References to petitioner's explanation that he was fired after admitting the incident, that he has avoided subsequent employment with children, and that he would never do something like that again.
- e. Activities supporting claim that petitioner changed behavior or circumstances. References to petitioner's claims of college studies and employment in other states and overall maturity.
- f. References regarding good moral character. No documentation (see *supra*).

6. At the first status conference in this matter, held on April 3, 2017, the petitioner requested additional time to submit personal references and documentation of his activities since 2009, which the Department indicated it might still consider as part of a possible reassessment of its decision in the matter. At the second status conference, held on May 4, 2017, the petitioner requested and was granted an extension of 30 more days for these submissions.

7. On June 6, 2017 the petitioner submitted a one-page transcript of six trimesters of courses he had taken between Fall 2014 and Spring 2016 at a community college in Washington State. In a phone call on June 9, 2017, the

petitioner indicated he was in the process of following that up with personal references from his college professors and employers.

8. At a status conference held on July 20, 2017 the hearing officer gave the petitioner a final deadline of August 4, 2017 to submit any additional references or documentation of his activities from 2009 to present. To date, the petitioner has submitted nothing further.

ORDER

The Department's decision is affirmed.

REASONS

The Board has noted that the overarching purpose of the statutes governing the reporting of abuse is to protect children, and that the child protection registry is a tool that is used to further this purpose by providing certain employers and volunteer groups a means to check the suitability of individuals seeking employment or volunteer work with children. 33 V.S.A. § 4911(1).

The petitioner's request for expungement is based on his desire to "clear (his) record". He points primarily to the

passage of time without further reported incidents as support for his expungement request.

The expungement process is governed by 33 V.S.A § 4916c. The applicable provisions are found in 33 V.S.A. § 4916c(b), which state:

The person shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children. Factors to be considered by the commissioner shall include:

- (1) The nature of the substantiation that resulted in the person's name being placed on the registry.
- (2) The number of substantiations, if more than one.
- (3) The amount of time that has elapsed since the substantiation.
- (4) The circumstances of the substantiation that would indicate whether a similar incident would be likely to occur.
- (5) Any activities that would reflect upon the person's changed behavior or circumstances, such as therapy, employment or education.
- (6) References that attest to the person's good moral character.

A person may appeal to the Human Service Board if the commissioner denies his/her request for expungement; and the standards for the Board's review are set out in 33 V.S.A. § 4916c(e), which states, in pertinent part:

The person shall be prohibited from challenging his or her substantiation at hearing, and the sole issue before

the board shall be whether the commissioner abused his or her discretion in denial of the petition for expungement. The hearing shall be on the record below, and determinations of credibility of witnesses made by the commissioner shall be given deference by the board.

Abuse of discretion arises when the decision is made for untenable reasons or the record has no reasonable basis for the decision. State v. Putnam, 164 Vt. 558, 561 (1996); USGen New England, Inc. v. Town of Rockingham, 177 Vt. 193 (2004). Abuse of discretion can extend to a failure to exercise authority. In Re: T.S., 144 Vt. 592, 593 (1984). If the Department has a reasonable basis for its decision, the Board must affirm the Department's decision, even in those situations in which the Board or another trier of fact may have reached a different conclusion based on the information at hand. The burden is on the petitioner to show that the Department abused its discretion.

During the registry review process, including this appeal, the petitioner has pointed primarily to his seven-year history, including college attendance and employment, with no further reported incidents or complaints. However, despite being allowed a total of nearly nine months in which to do so, he has not produced a single character reference or any documentation of gainful employment. The record is clear that the Department looked at all the statutory factors for

expungement; and, in light of the above, it cannot be concluded that it has abused its discretion in this case. The Department's decision must, therefore, be affirmed.

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