



LINDABURY

McCORMICK, ESTABROOK & COOPER, P.C.

Attorneys at Law

EdLawAlert

By the EdLaw Group at Lindabury

February 15, 2010

Appellate Court Denies Teacher's Perceived Disability Discrimination Claim

By Joshua S. Sklarin

In a case decided last fall, the Appellate Division affirmed the decision by the State Board of Education that the Midland Park Board of Education ("Board") had not discriminated against its employee under the New Jersey Law Against Discrimination ("LAD"). In *Varjian v. Midland Park Board of Ed., et al.*, the court found that the appellant employee had failed to establish a prima facie case of discrimination based on a perceived disability when his duties were reassigned. The court found the Board's actions to be within the scope of its authority, stating that a "rational fact finder could not find that a reasonable employee would consider any [of the Board's actions], individually or collectively, materially adverse."

The employee, Leon Varjian, a mathematics teacher, alleged discrimination against the Midland Park Board based upon a perceived disability in violation of the LAD. He claimed that when he returned to teaching after medical leave for cancer treatment, he was discriminated against because he was assigned fewer honors courses and a different classroom, and that the activities of the student organization that he advised were reduced. Prior to Varjian's leave, he was the only teacher assigned to the high level mathematics courses. Although Varjian returned to his teaching duties in September 2000, the Board made the determination that it was better school policy to have more than one teacher assigned to high level mathematics courses. The Board did not dispute that this change in policy was due to Varjian's absence.

Upon a complete review of the record, the Appellate Division explained that under the three part *McDonnell-Douglas Corp. v. Green* framework a complainant must first prove the prima facie elements of discrimination. Upon such proof, the employer must show a legitimate, non-discriminatory reason for the adverse employment action. If the employer does so, then the burden shifts back to the complainant to show that the articulated non-discriminatory reason is not the true reason for the adverse employment action.

The Appellate Division explained that in order for a complainant to establish a prima facie case of discrimination, he must show that (1) he was handicapped within the meaning of the law; (cont'd ►)

The EDUCATION LAW GROUP at Lindabury has extensive experience in the area of school law. We serve as general counsel, special education counsel, and labor counsel for boards of education throughout the State.

ANTHONY P. SCIARRILLO
ATHINA LEKAS CORNELL
JEFFREY R. MERLINO
DENNIS MCKEEVER
LISA M. GINGELESKIE
JENNIFER A. OSBORNE
PAUL E. GRIGGS
JOSHUA S. SKLARIN

edlawgroup@lindabury.com

Westfield Office

P. O. Box 2369
53 Cardinal Drive
Westfield, NJ 07091
(TEL) 908-233-6800
(FAX) 908-518-2967

Summit Office

480 Morris Avenue
Summit, NJ 07901
(TEL) 908-273-1212
(FAX) 908-273-8922

Rumson Office

20 Bingham Avenue
Rumson, NJ 07760
(TEL) 732-741-7777
(FAX) 732-758-1879

www.lindabury.com

2307462v1

© 2010 LINDABURY, McCORMICK, ESTABROOK & COOPER, P.C. ALL RIGHTS RESERVED.

ATTORNEY ADVERTISING

(2) he had been performing his or her work at a level that met the employer's legitimate expectations; (3) he had been required to labor under conditions that were unreasonably different from those of other employees, had been transferred, or had been fired; and (4) the employer sought another to perform the same work after the complainant had been removed from the position.

In examining the decisions of the Administrative Law Judge ("ALJ") and the Commissioner of the Board of Education ("Commissioner"), the Appellate Division noted that it may not upset the earlier decisions unless it is shown that such decisions were arbitrary, capricious or unreasonable. The Appellate Division agreed with the ALJ who found that "not a single element has been met" by the appellant regarding the LAD claim. The Appellate Division similarly agreed with the Commissioner who found that the petitioner presented no evidence that the Board acted in a discriminatory fashion. Specifically, the record revealed that the changes in scheduling made to Varjian's school during his time of absence were "within the lawful scope of a board of education's authority" and there was no evidence that such changes were discriminatory in nature.

The Appellate Division explained that although the "threshold to establish the elements of a prima facie showing of discrimination is a low one," Varjian nevertheless failed to meet that threshold. The Appellate Division held that Varjian's contention that the change of teaching assignments was in response to his cancer was simply not supported by the evidence. Varjian's reason for preferring teaching the high level courses, that it gave him "greater prestige, status and cachet," did not meet the required objective standards, "but reflects his subjective feelings about the merits of some teaching assignments within his subject matter over others." The Appellate Division found that the decisions of the ALJ and Commissioner were proper because a reasonable employee could not consider the actions Varjian complained of to be materially adverse. Therefore, the decision of the State Board of Education was affirmed.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.



www.lindabury.com

Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision.

*You may, if this letter is inaccurate or misleading, report same to the
Committee on Attorney Advertising, Hughes Justice Complex, P.O. Box 037, Trenton, NJ 08625.*