

**BEFORE THE
TEACHER STANDARDS AND PRACTICES COMMISSION
STATE OF OREGON**

IN THE MATTER OF:) **FINAL ORDER INCORPORATING**
) **RULING ON MOTION FOR**
KATHLEEN M. JACKSON) **SUMMARY DETERMINATION**
) **AND PROPOSED ORDER**
)
) OAH Case No. 2017-ABC-00474

This matter came before the Teacher Standards and Practices Commission during its meeting of November 3, 2017 to consider the Ruling on Motion for Summary Determination and Proposed Order issued by Administrative Law Judge Samantha Fair on July 11, 2017. Respondent did not file exceptions to the ruling and proposed order.

After considering the record, the Commission adopts the Ruling on Motion for Summary Determination and Proposed Order as the Final Order as set forth below, and imposes a six-month suspension on Respondent's Initial II teaching license, along with four years of probation upon reinstatement of licensure, with the conditions specified below.

HISTORY OF THE CASE

On April 25, 2016, the Teacher Standards and Practices Commission (Commission) issued Kathleen M. Jackson a Notice of Opportunity for Hearing, proposing to impose discipline against Ms. Jackson. On May 2, 2016, Ms. Jackson requested a hearing.

On April 11, 2017, the Commission referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Bernadette Bignon to preside at hearing. On May 2, 2017, ALJ Monica Whitaker convened a telephone prehearing conference. Ms. Jackson did not appear. Ms. Jackson's attorney Ralph Wiser appeared and withdrew from representing her. The Commission appeared and was represented by Senior Assistant Attorney General (AAG) Raul Ramirez. ALJ Whitaker rescheduled the prehearing conference for May 22, 2017.

On May 22, 2017, Presiding ALJ John Mann convened a telephone prehearing conference. Ms. Jackson did not appear. The Commission appeared and was represented by Senior AAG Raul Ramirez. Presiding ALJ Mann reassigned the matter to ALJ Samantha Fair, scheduled the hearing for August 24, 2017, and set deadlines for submission of motions, witness lists and exhibits.

On June 9, 2017, the Commission filed a Motion for Summary Determination (Motion). Ms. Jackson failed to file a response by the previously-provided deadline of July 10, 2017.

ISSUES

1. Whether there are any genuine issues as to any material facts and, if not, whether the Commission is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.
2. Whether Ms. Jackson engaged in conduct that constituted gross neglect of duty. ORS 342.175 and OAR 584-020-0040.
3. Whether the Commission may impose discipline against Ms. Jackson. ORS 342.175 and ORS 342.177.

DOCUMENTS CONSIDERED

The ALJ considered the following documents in issuing this ruling and proposed order: the Motion, the Commission's Exhibits 1 through 10, and the pleadings.

STATEMENT OF FACTS

1. On April 7, 1998, the Commission licensed Ms. Jackson as a teacher. (Exs. 2 at 1; 10 at 2.) Currently, she holds an Initial II teaching license that expires on November 24, 2017. (Exs. 3 at 1; 10 at 2.)
2. Until December 17, 2015, Ms. Jackson worked for the Vernonia School District (District) for 20 years. (Exs. 6; 8 at 1.) The District has a written drug- and alcohol-free workplace policy that provides "an employee shall not, in the workplace, unlawfully manufacture, distribute, dispense, possess, or use a controlled substance or alcohol." (Ex. 9 at 1.)
3. On December 9, 2013, and May 14, 2014, District administrators met with Ms. Jackson and issued her notices regarding her repeated behavior of reporting to work or interacting with students while smelling of alcohol. Coworkers and a student had reported Ms. Jackson's behavior to the District. (Exs. 5 at 2; 6.)
4. On January 9, 2015, Ms. Jackson arrived late for work at the school and smelling of alcohol. (Ex. 5 at 2.) Four or five of her coworkers reported her behavior to the District. She had been drinking alcoholic beverages in response to stress and some difficult personal issues. She did not consume alcohol while on school grounds. (Ex. 6.) Nate Underwood, the Vernonia High and Middle Schools' principal, sent her home, issued her another written notice regarding her conduct, and placed her on administrative leave through January 20, 2015. (Ex. 5 at 2.)
5. On May 4, 2015, Ms. Jackson reported to work, smelling of alcohol. (Ex. 5 at 3.) The District sent her home. After being sent home, Ms. Jackson stopped at the Vernonia Police Department and had a breathalyzer test performed. It came back showing zero blood alcohol content, and she submitted a copy of that result to her union. She had last consumed an alcoholic beverage the night before reporting to school. (Ex. 6.)
6. On June 1, 2015, Mr. Underwood issued a formal reprimand to Ms. Jackson for

violations of OAR 584-020-0040(4) and the District's policy by reporting to work while possessing or using alcohol. The formal reprimand provided that any future violations of this administrative rule and District policy would result in her termination from employment. (Ex. 7 at 1.) On June 2, 2015, Ms. Jackson signed a Last Chance Agreement (LCA) with the District as a result of her alcohol abuse. The LCA required Ms. Jackson to comply with all established standards of conduct and job performance. The LCA required Ms. Jackson to submit to random and reasonable suspicion alcohol testing to be performed by the Vernonia Police Department. The LCA further provided for Ms. Jackson's immediate termination from employment if she failed to comply with the LCA. (*Id.* at 2-3.)

7. On December 4, 2015, Ms. Jackson again reported to work, smelling of alcohol, which was reported to the District by a coworker. She was working on school grounds, when school was in session and students were present. Pursuant to the terms of the LCA, Mr. Underwood ordered Ms. Jackson to submit to a breathalyzer test conducted by the Vernonia Police Department. At Ms. Jackson's request, the police took two samples. (Exs. 4 at 1-3; 6.) The test results showed that her blood alcohol level was 0.044 and 0.048. (Exs. 1 at 1-2; 10 at 2.)

8. On December 17, 2015, Ms. Jackson resigned from her teaching position with the District. (Ex. 8 at 1.)

9. On March 8, 2016, a Board investigator interviewed Ms. Jackson regarding the allegations of her alcohol use. During the interview, Ms. Jackson acknowledged that she had a substance abuse issue, had attended an inpatient treatment program in January 2015, and began attending Alcoholic Anonymous meetings after her resignation from the District. During the 2015 calendar year, she had periods of sobriety but relapsed into abusing alcoholic beverages during periods of work and personal stress. (Ex. 6.)

CONCLUSIONS OF LAW

1. There are no genuine issues as to any material facts and the Commission is entitled to a favorable ruling as a matter of law.
2. Ms. Jackson engaged in conduct that constituted gross neglect of duty.
3. The Commission may impose discipline against Ms. Jackson.

OPINION

Standard of Review for Motion for Summary Determination

OAR 137-003-0580 addresses motions for summary determination. It provides, in relevant part:

- (6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

* * * * *

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling * * *.

Pursuant to OAR 137-003-0580(6)(a), in making my ruling, The Commission considered the Motion, Exhibits 1 through 10, and the pleadings as did the ALJ. Pursuant to OAR 137-003-0580(7), the Commission and the ALJ reviewed the evidence in the light most favorable to Ms. Jackson, the non-moving party. The Commission determined, like the ALJ, there are no genuine issues as to the material facts of the Commission's allegations that are relevant to resolution of the legal issues and the Commission is entitled to a favorable ruling.

Gross Neglect of Duty

OAR 584-020-0040(4) provides, in part:

Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following may be admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

* * * * *

(g) Appearing on duty or at any district-sponsored activity while under the influence of alcohol or any controlled substance;

* * * * *

(n) Substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030[.]

OAR 584-020-0010 provides, in part:

The educator demonstrates a commitment to:

* * * * *

(5) Use professional judgment[.]

OAR 584-020-0025(2) provides, in part:

The competent teacher demonstrates skills in:

* * * * *

(e) Using district lawful and reasonable rules and regulations.

On multiple occasions over the course of three years, Ms. Jackson reported to work as a teacher for the District after enough alcohol consumption that she still smelled of alcohol. Her consumption of alcohol was significant enough that coworkers and a student reported her to the District on multiple occasions. Because her alcohol usage was noticed by her coworkers and a student, Ms. Jackson reported to work while under the influence of alcohol. Additionally, the District issued multiple notices to Ms. Jackson regarding her alcohol usage and how it violated District policy and OAR 584-020-0040(4). Despite these warnings and the eventual issuance of a LCA with the District, Ms. Jackson continued to engage in the behavior of working on school grounds in the presence of students while under the influence of alcohol. Because Ms. Jackson repeatedly appeared at work for the District while under the influence of alcohol, she violated OAR 584-020-0040(4)(g). Her continued use of alcohol during periods when she would be reporting to work at the District, despite repeated warnings, demonstrated her lack of professional judgment and her inability to follow District policy, in violation of OAR 584-020-0010(5) and OAR 584-020-0025(2)(e). Pursuant to OAR 584-020-0040(4), Ms. Jackson's violations of these administrative rules constituted gross neglect of duty.

Discipline of Licensee

ORS 342.175(1) provides, in part:

The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator, or suspend or revoke the right of any person to apply for a license or registration, if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

* * * * *

(b) Gross neglect of duty[.]

ORS 342.177(3) provides:

The commission shall render its decision at its next regular meeting following the hearing. If the decision of the commission is that the charge described in ORS 342.175 (1) has been proven, the commission may take any or all of the following disciplinary action against the person charged:

- (a) Issue a public reprimand.
- (b) Place the person on probation for a period not to exceed four years and subject to such conditions as the commission considers necessary.
- (c) Suspend the license or registration of the teacher or administrator for a period not to exceed one year.
- (d) Revoke the license or registration of the teacher or administrator.
- (e) Revoke the right to apply for a license or registration.

Based upon Ms. Jackson's conduct that constituted gross neglect of duty, the Commission has the authority under OAR 342.175(1) and OAR 342.177(3) to take disciplinary action against her. Ms. Jackson's conduct involved the abuse of alcohol over a multiple year period. She continued to engage in this behavior despite multiple warnings from the District, her knowledge that she had a substance abuse problem, and her attendance at an inpatient treatment program. Because of these factors, the following actions sought by the Commission are appropriate:

- A six-month suspension of Ms. Jackson's license; and
- Placement of Ms. Jackson on four years of probation with the following conditions:
 - Completion of an alcohol and drug assessment by a licensed professional within 60 days of the issuance of the final order;
 - Completion of any recommended treatment program, which must begin within 60 days of the assessment unless the Commission allows an extension;
 - Maintenance of her sobriety; and
 - Providing the Commission with any documentation demonstrating compliance with

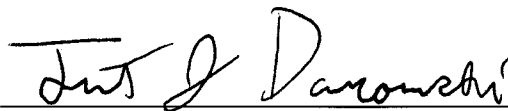
the conditions of probation.

RULING AND ORDER

The Teacher Standards and Practices Commission's Motion for Summary Determination is GRANTED. Based on the foregoing, the Teacher Standards and Practices Commission Orders as follows:

1. Kathleen M. Jackson's Initial II teaching license is suspended for six months beginning the date of this Final Order.
2. Kathleen M. Jackson will be placed on four years of probation upon reinstatement of licensure with the following conditions:
 - Kathleen M. Jackson must complete an alcohol and drug assessment by a licensed professional within 60 days of the issuance of this Final Order;
 - Kathleen M. Jackson must follow and complete any recommended treatment program, which must begin within 60 days of the assessment unless the Teacher Standards and Practices Commission grants an extension;
 - Kathleen M. Jackson must maintain her sobriety; and
 - Kathleen M. Jackson must provide the Teacher Standards and Practices Commission with any documentation it requests that demonstrate her compliance with the conditions of probation.

It is so Ordered this 12 day of December, 2017.



Trent Danowski, Interim Executive Director
Teacher Standards and Practices Commission

NOTICE OF APPEAL RIGHTS

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provision of ORS 183.482 to the Oregon Court of Appeals.