

received the Order. If this Order was mailed to you, the date of service was the day it was *mailed*, not the day you received it. If you do not file a petition for rehearing or reconsideration within the time limits provided, you will lose your opportunity for rehearing or reconsideration and you will lose your right to appeal to the Oregon Court of Appeals.

If, after you have filed a petition for rehearing or reconsideration, the agency issues an Order that you are dissatisfied with, you have a right to appeal that Order to the Oregon Court of Appeals pursuant to ORS 183.482.

If, 60 days after you have filed a petition for rehearing or reconsideration, the agency has not issued an Order, your petition will be considered denied and at that time you will have the right to appeal the original Order to the Oregon Court of Appeals pursuant to ORS 183.480 and ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day that your petition for rehearing or reconsideration is deemed denied. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
TEACHER STANDARDS AND PRACTICES COMMISSION**

IN THE MATTER OF THE TEACHING) **PROPOSED ORDER**
LICENSE OF)
) OAH No. 119059
GLENNA MARIE ZARNEKEE)

HISTORY OF THE CASE

On October 12, 2004, the Teacher Standards and Practices Commission (TSPC) served Glenna Marie Zarnekee (Ms. Zarnekee), with a Notice of Denial of Reinstatement of Revoked License and Opportunity for Hearing and Notice of Contested Case Rights and Procedures. TSPC alleges that Ms. Zarnekee failed to respond appropriately to character questions and to furnish documents regarding the reinstatement of her Oregon teaching license. Ms. Zarnekee timely requested a hearing on October 27, 2004.

On December 7, 2004, TSPC referred the matter to the Office of Administrative Hearings (OAH), for a contested case hearing. On January 14, 2005, the OAH served a Notice of Hearing and assigned the case to Administrative Law Judge (ALJ) Peter A. Rader.

The hearing was held in Salem, Oregon on March 7, 2005. Ms. Zarnekee appeared without counsel and testified on her own behalf. She waived her right to a private hearing pursuant to Oregon Revised Statutes (ORS) 342.177(1). TSPC was represented by Assistant Attorney General Joe Gordon McKeever, who called TSPC Investigator Susan Nisbet as a witness.

ISSUES

1. Whether Ms. Zarnekee violated OAR 584-020-0040(4)(c) by allegedly failing to respond appropriately to character questions on her application for reinstatement of her Oregon teaching license.
2. Whether Ms. Zarnekee violated OAR 584-020-0040(4)(p) by allegedly failing to respond to the TSPC's requests for information and records regarding her application for reinstatement of her Oregon teaching license.

EVIDENTIARY RULING

Exhibits A-1 through A-25 were offered by the TSPC at hearing and admitted into the record without objection. Exhibits R-1 through R-4 were offered by Ms. Zarnekee at hearing

and admitted into the record without objection. The hearing concluded and the record closed on March 7, 2005.

FINDINGS OF FACT

1. The Teacher Standards and Practices Commission (TSPC) is a State agency with jurisdiction over licensing and discipline matters involving teachers and school administrators in Oregon. (ORS chapter 342.175 – 190, OAR chapter 584, division 20, test. of S. Nisbet).

2. Ms. Zarnekee obtained her Oregon teaching license in 1979, but TSPC revoked it on May 23, 1995, because she knowingly falsified documents and made misrepresentations relating to her professional competence, experience and qualifications. (Exs. A-2 and A-12, and test. of S. Nisbet). At the time, Ms. Zarnekee was battling cancer, and when she did not request a hearing, TSPC entered a Final Order by Default revoking her teaching license, which was sent to her address of record in Portland. (Ex. A-2, test. of S. Nisbet and G. Zarnekee).

3. On July 11, 1995, Ms. Zarnekee wrote to David Myton, who was then TSPC's Executive Director, inquiring about a summary of a December 31, 1994 meeting with him and asking for verification that her license was revoked. (Ex. A-25, test. of G. Zarnekee).

4. On July 26, 1995, Ms. Zarnekee's attorney wrote to TSPC stating that he would not be representing her on a Petition for Judicial Review, but that he had prepared a form petition for her should she decide to proceed on a *pro per* basis. (Ex. A-3).

5. Ms. Zarnekee holds valid teaching licenses in Texas and Washington and has been continuously employed as a substitute teacher in Vancouver, Washington's Evergreen School District #114 since 1999. (Ex. R-4, test. of G. Zarnekee). She also works part time as a property manager. (Test. of G. Zarnekee).

6. On April 18, 2000, Ms. Zarnekee contacted TSPC regarding reinstatement of her Oregon teaching license. (Ex. A-4). On April 21, 2000, TSPC provided her with a checklist of documents required for the application, which included taking nine (9) hours of required coursework. (Ex. R-1 at 1 – 4, test. of G. Zarnekee). On May 26, 2000, her application was rejected as being incomplete because she had not provided proof of the completed coursework, which Ms. Zarnekee attributed to financial hardship. (Exs. A- 10 at 9, R-1 at 4, test. of G. Zarnekee).

7. On November 15, 2001, a complaint was filed against Ms. Zarnekee with Oregon's Construction Contractors Board (CCB), arising out of work on a residential remodeling contract. (Ex. A-5). CCB found other complaints related to her work as a property manager. (Exs. A- 7, A-8). The latest CCB complaint resulted in an uncontested Final Order, dated December 14, 2001, imposing a \$5,000 civil penalty against her for operating as an unlicensed contractor in violation of ORS 701.055(1). (Ex. A-8).

8. When Ms. Zarnekee did not pay the civil penalty, CCB's Final Order was recorded as a judgment with Multnomah County Clerk's Office on March 22, 2002. The judgment was released by CCB on July 15, 2002, due to defective service. (Exs. A-8, A-9).

9. On September 9, 2002, Ms. Zarnekee met with TSPC Investigator Susan Nisbet at TSPC's offices in Salem. She claimed to be unaware of her 1995 license revocation, but was advised of the preliminary requirements for reinstatement. (Ex. 10 at 18, test. of G. Zarnekee and S. Nisbet).

10. On February 19, 2003, TSPC's Executive Director advised Ms. Zarnekee in writing that her application was to be supported by a personal affidavit and additional documentation sufficient to establish that she possessed all of the qualifications required for licensure. (Ex. A-11).

11. Ms. Zarnekee filed an Application for Educator License Form C-1 with TSPC on March 26, 2003. (Ex. A-12). Question no. 8 on the application asks whether an applicant has ever been convicted or granted conditional discharge by any court for a misdemeanor, to which Ms. Zarnekee answered in the negative. (Ex. A-12 at 4). Question no. 9 on the application asks whether an applicant has ever been arrested or cited for any offense listed in question 8, to which Ms. Zarnekee answered in the negative. (Ex. A-12 at 4).

12. On May 9, 2003, as part of its routine background check, TSPC accessed the National Judicial Information Network (NJIN), a database that revealed an arrest warrant had been issued for Ms. Zarnekee on August 1, 2002, for the Class C misdemeanor charge of operating as an unlicensed contractor. (Ex. A-23 and A-24, and test. of S. Nisbet).

13. On May 12, 2003, Ms. Nisbet wrote to Ms. Zarnekee requesting information concerning the charge and that she arrange to have Evergreen School District send a copy of her personnel file directly to TSPC. (Ex. A-14, test. of S. Nisbet). The purpose in requesting a personnel file is to verify whether there have been breaks in a teacher's work history, the rate of pay, the number of days worked and whether a teacher is ineligible to teach at certain schools. (Test. of S. Nisbet).

14. Ms. Zarnekee left recorded telephone messages for Ms. Nisbet on May 19 and 20, 2003, stating that she knew nothing about an arrest warrant. (Exs. A-15, A-16 and A-17). She did not arrange for Evergreen School District to send her personnel file directly to TSPC. (Test. of S. Nisbet and G. Zarnekee).

15. Ms. Zarnekee was found not guilty of the misdemeanor charge on November 12, 2003, following a hearing. (Exs. A-23 at 3, test. of G. Zarnekee).

16. On May 25, 2004, Ms. Zarnekee's attorney wrote to her stating that he was providing a copy of an Order Setting Aside Arrest Record and advising her that the records in that case were sealed and that she had the legal right to deny ever being arrested in that case; however, that Order is not part of this record. (Exs. A-20, A-21 at 3, test. of G. Zarnekee).

17. On February 12 and July 19, 2004, Ms. Nisbet wrote to Ms. Zarnekee requesting additional information about the misdemeanor charge and requesting that she arrange to have Evergreen School District send a copy of her personnel file directly to TSPC. (Exs. A-19, A-22, test. of S. Nisbet).

18. Ms. Zarnekee submitted an unsworn affidavit to TSPC, dated June 21, 2004, along with fingerprints, various letters of recommendation dating back to 1977, employment verification forms from Evergreen School District, course completion records, and letters from students and colleagues reflecting favorably on her teachings abilities and activities. (Exs. A-13, A-21, R-2, R-3 and R-4, test. of G. Zarnekee).

19. Ms. Zarnekee declined to sign a release allowing Evergreen School District to send her personnel file directly to TSPC. (Test. of G. Zarnekee).

CONCLUSIONS OF LAW

1. Ms. Zarnekee did not violate OAR 584-020-0040(4)(c) by failing to respond appropriately to character questions on her application for reinstatement of her Oregon teaching license.

2. Ms. Zarnekee violated OAR 584-020-0040(4)(p) by failing to provide information and records requested by TSPC regarding her application for reinstatement of her Oregon teaching license.

OPINION

The issues in this case are whether Ms. Zarnekee knowingly falsified her application, in violation of OAR 584-020-0040(4)(c), by failing to disclose information relating to the misdemeanor charge of operating as an unlicensed contractor, and whether she violated OAR 584-020-0040(4)(p) by failing to provide personnel records requested by TSPC as part of its investigation into her fitness for licensure.

The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position. ORS 183.450(2). Ms. Zarnekee has the burden of proving her fitness to hold an Oregon teaching license, but once her application is denied, the TSPC has the burden of proving by a preponderance of evidence that its denial was justified. *Guero v. Teacher Standards and Practices Commission*, 312 Or 418 (1991). The standard in administrative hearings is preponderance of the evidence. *Cook v. Employment Division*, 47 Or App 437 (1980). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

TSPC's authority to require an applicant for a teaching license to furnish satisfactory evidence of good moral character and physical and mental health is found in ORS 342.143, which states in relevant part:

- (2) The Teacher Standards and Practices Commission may also require an applicant for a teaching, personnel service or administrative license to furnish evidence satisfactory to the commission of good moral character, mental and physical health, and such other evidence as it may deem necessary to establish the applicant's fitness to serve as a teacher.

TSPC adopted Standards for Competent and Ethical Performance of Oregon Educators, as codified in OAR chapter 584, division 20, to determine whether a teaching license should be denied, suspended or revoked. TSPC's Executive Director may deny licensure to an applicant if there is evidence that the applicant lacks fitness to serve as an educator. OAR 584-020-0040(3)¹. Among the grounds for denying licensure is gross neglect of duty as defined in OAR 584-020-0040(4):

- (4) 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:

- (c) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

- (p) Subject to the exercise of any legal right or privilege, failure or refusal by an educator under investigation to respond to requests for information, to furnish documents or to participate in interviews with a Commission representative relating to a Commission investigation.

Application for Reinstatement

Ms. Zarnekee was found not guilty of the misdemeanor charge of operating as an unlicensed contractor following a hearing in November 2003. The issue here is whether she knowingly falsified or misrepresented information concerning the misdemeanor charge on her reinstatement application of March 26, 2003.

¹ OAR 584-020-0040(3) states in part:

The Commission may initiate proceedings to suspend or revoke the license or registration of an educator under ORS 342.175 or deny a license or registration an applicant under ORS 342.143 who:

- (c) is charged with gross neglect of duty;

There is circumstantial evidence to suggest that Ms. Zarnekee was aware of the charge filed against her when she applied for reinstatement but, inasmuch as the court records in that case are sealed, there is no way to conclusively verify that information. The NJIN printout indicates that an arrest warrant was issued on August 1, 2002, and her attorney's letter of May 24, 2004 refers to an Order Setting Aside Arrest Record, but TSPC did not meet its burden of proving that Ms. Zarnekee was aware of the misdemeanor charge on March 26, 2003; the date she applied for reinstatement of her teaching license. Accordingly, there is insufficient evidence to find that she knowingly falsified or misrepresented information on her application in violation of OAR 584-020-0040(4)(c).

Request for Information and Documents

On three occasions, TSPC requested in writing that Ms. Zarnekee arrange to have her current employer, Evergreen School District, send her personnel file directly to its offices. The issue here is whether Ms. Zarnekee violated OAR 584-020-0040(p) by failing to make those arrangements or otherwise allowing TSPC unfiltered access to her personnel file.

In the course of investigating applicants who seek reinstatement of their revoked teaching license, TSPC is empowered to request supporting documents to fully evaluate an applicant's moral character and fitness for teaching. ORS 342.176². The purpose in requesting a teacher's personnel file is to determine such things as whether there have been breaks in work history, the rate of pay, the number of days worked and whether a teacher has been removed from a district's eligibility list. This information is legitimately related to the determination of a teacher's moral character and fitness to teach and is not unreasonably intrusive.

Ms. Zarnekee argues that she provided a great many documents in support of her application, including favorable letters of reference and thanks from former colleagues and students, verification of her employment with the Evergreen School District and records of completed courses. She claims that as a substitute teacher, the school district does not evaluate her performance and that her personnel file contains no additional information regarding her teaching ability. She also contends that if personnel records are supplied, she must copy and provide them herself because the school district lacks the staff to do so. She denies being placed on any ineligibility lists in the Evergreen School District and argues that she has reasonably complied with all records requests.

Ms. Zarnekee's representation that she provided all records from her Evergreen School District personnel file to TSPC is not supported by the evidence. At hearing, she produced for the first time a district-generated computer printout of all hours worked there since 1999. Many of the letters she provided predate her current employment and are not reflective of her most

² ORS 342.176 (2) provides:

The Commission may appoint an investigator and shall furnish the investigator with appropriate professional and other special assistance reasonably required to conduct the investigation, and the investigator is empowered to subpoena witnesses over the signature of the executive director, swear witnesses and compel obedience in the same manner as provided under ORS 183.449(2).

recent assignments. Moreover, her refusal to sign a release allowing the school district to send her file to TSPC makes it somewhat problematic to verify her representations that the district does not evaluate substitute teachers, that it does not provide copies of personnel files and that she has never been placed on any ineligibility list.

Ms. Zarnekee is obviously an intelligent person, but when she contacted TSPC about her reinstatement she claimed ignorance of her 1995 license revocation for falsifying documents, even though she had consulted an attorney and TSPC's Executive Director about the matter at the time. She also denied knowledge of the charge of operating as an unlicensed contractor, even though she had legal representation and was found not guilty following a hearing in November 2003. These additional factors, as well as the grounds for her 1995 license revocation, make TSPC's request to have the Evergreen School District send her personnel file directly to its offices reasonable and directly related to the issue of competency and her qualifications to teach.

Based on the foregoing, there is sufficient evidence to conclude that Ms. Zarnekee engaged in gross neglect of duty, as that term is defined in OAR 584-020-0040, by failing to furnish requested documents to TSPC in violation of OAR 584-020-0040(4)(p).

ORDER

I propose that the Teacher Standards and Practices Commission issue the following order:

The application of Glenna Marie Zarnekee for an Oregon teaching license is denied.

15/ Peter A. Rader
Peter A. Rader, Administrative Law Judge
Office of Administrative Hearings

MAILING AND ISSUE DATE: March 30, 2005

EXCEPTIONS

The proposed order is the Administrative Law Judge's recommendation to the Teacher Standards and Practices Commission. If you disagree with any part of this proposed order, you may file written objections, called "exceptions," to the proposed order and present written argument in support of your exceptions. **Written argument and exceptions must be filed within the fourteen (14) days after mailing of the proposed order with the:**

Teacher Standards and Practices Commission
465 Commercial Street, NE
Salem, Oregon 97301

The Commission need not allow oral argument. The Executive Director may permit oral argument in those cases in which the Director believes oral argument may be appropriate or helpful to the Commissioners in making a final determination. If oral argument is allowed, the Commission will inform you of the time and place for presenting oral argument.

**APPENDIX A
LIST OF EXHIBITS CITED**

- Ex. A-2 Final Order of Default revoking G. Zarnekee's license dated May 23, 1995
- Ex. A-3 Letter from Lorenz to Myton dated July 26, 1995
- Ex. A-4 Letter from Myton to Zarnekee dated April 21, 2000
- Ex. A-5 CCB complaint form filed against G. Zarnekee dated November 15, 2001
- Ex. A-6 CCB investigative report dated November 23, 2001
- Ex. A-7 CCB investigative report dated December 6, 2001
- Ex. A-8 CCB Final Order dated December 14, 2001
- Ex. A-9 Release of Judgment dated July 15, 2002
- Ex. A-10 Transcript of TSPC interview with G. Zarnekee dated September 9, 2002
- Ex. A-11 Letter to G. Zarnekee from V. Chamberlain, ED of TSPC re: reinstatement requirements dated February 19, 2003
- Ex. A-12 G. Zarnekee's Application for Educator License Form C-1 dated March 26, 2003
- Ex. A-13 Verification of G. Zarnekee's teachers license in Washington
- Ex. A-14 Letter from S. Nisbet to G. Zarnekee dated May 12, 2003
- Ex. A-15 Transcript of voice message from G. Zarnekee dated May 19, 2003
- Ex. A-16 Transcript of voice message from G. Zarnekee dated May 20, 2003
- Ex. A-17 Transcript of voice message from G. Zarnekee dated July 3, 2003
- Ex. A-19 Letter from S. Nisbet to G. Zarnekee dated February 12, 2004
- Ex. A-20 Letter from P. Newton, Esq. to G. Zarnekee dated May 25, 2004 referencing an Order Setting Aside Arrest Record
- Ex. A-21 Unsworn affidavit from G. Zarnekee with exhibits regarding her character, employment status and teaching abilities

- Ex. A-22 Letter from S. Nisbet to G. Zarnekee dated July 19, 2004
- Ex. A-23 NJIN printout dated December 1, 2003
- Ex. A-24 NJIN printout dated May 9, 2003
- Ex. A-25 Letter from G. Zarnekee to D. Myton dated July 11, 1995
- Ex. R-1 Correspondence and application from TSPC to G. Zarnekee dated April 21, 2000
- Ex. R-2 Letters of thanks from elementary grade students to G. Zarnekee
- Ex. R-3 Data Directory dated January 10, 2000 regarding G. Zarnekee
- Ex. R-4 Computer print out of days worked by G. Zarnekee in Evergreen School District as a substitute teacher since 1999

CERTIFICATE OF SERVICE

I certify that on March 30, 2005, I served the attached Proposed Order by mailing in a sealed envelope, with first class certified postage prepaid, a copy thereof addressed as follows:

GLENNA MARIE ZARNEKEE
3022 NW 14TH ST
PORTLAND OR 97212

VICTORIA CHAMBERLAIN
EXECUTIVE DIRECTOR
TEACHERS STANDARDS AND PRACTICES
465 COMMERCIAL ST NE
SALEM OR 97301

JOE GORDON McKEEVER
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
1162 COURT ST NE
SALEM OR 97301-4096

15/ Lucy Garcia

Lucy Garcia, Administrative Specialist
Office of Administrative Hearings
Transportation Hearings Division