

SHAWNEE COUNTY DISTRICT COURT
1200 WEST 10TH AVENUE
TOPEKA, KS.
2004 JUN -1 P 2:19

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION SIX

JOHN CAPORALE,)
)
 Petitioner,)
)
 v.) Case No. 03-C-1860
)
 KANSAS BEHAVIORAL SCIENCES)
 REGULATORY BOARD,)
)
 Agency.)
 _____)

MEMORANDUM DECISION AND ORDER

The above matter comes before the Court on the petition of John Caporale for Judicial Review, pursuant to the Kansas Act for Judicial Review and Civil Enforcement of Agency Action, K.S.A. § 77-601 et seq. After careful consideration, the Court finds and concludes as follows:

STATEMENT OF FACTS

1. On April 5, 2003 Petitioner Caporale filed an “Application for Licensure for the Practice of Psychology” pursuant to K.S.A. § 74-5310 et seq. The application was based upon Petitioner’s Ph.D. in Psychology awarded by Walden University, an online or distance learning institution.
2. The Kansas Behavioral Sciences Regulatory Board (“BSRB”) denied Petitioner Caporale’s application for licensure on September 30, 2003. The BSRB afforded

Petitioner Caporale the opportunity to submit additional information in support of his application.

3. On November 3, 2003, Petitioner Caporale submitted an enumerated list of supporting information to the BSRB.
4. The BSRB considered Petitioner's supplemented application on November 17, 2003 and issued a Notice of Final Agency Action denying Petitioner Caporale's application.

STANDARD OF REVIEW

This Court's standard of review is statutorily defined by the Kansas Act for Judicial Review and Civil Enforcement of Agency Action ("KJRA"). K.S.A. § 77-601 et seq. The BSRB final action falls within the KJRA. The KJRA provides the only avenue for judicial review. K.S.A. § 77-606. Therefore, pursuant to K.S.A. § 77-621(c) this Court shall overturn the BSRB Final Notice of Action only if one or more of the following applies:

- (1) The agency action, or the statute or rule and regulation on which the agency action is based, is unconstitutional on its face or as applied;
- (2) the agency has acted beyond the jurisdiction conferred by any provision of law;
- (3) the agency has not decided an issue requiring resolution;
- (4) the agency has erroneously interpreted or applied the law;
- (5) the agency has engaged in an unlawful procedure or has failed to follow the prescribed procedure;
- (6) the persons taking the agency action were improperly constituted as a decision-making body or subject to disqualification;
- (7) the agency action is based on a determination of fact, made or implied by the agency, that is not supported by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act; or

(8) the agency action is otherwise unreasonable, arbitrary or capricious.

DISCUSSION AND CONCLUSIONS OF LAW

Petitioner Caporale prays for relief under subsections 4 and 8 of K.S.A. § 77-621(c).

Petitioner Caporale has the burden of proof in challenging the BSRB action. K.S.A. 77-621(a)(1). A rebuttable presumption of validity attaches to all actions of an administrative agency. *Kansas Racing Mgmt., Inc. V. Kansas Racing Comm'n*, 244 Kan. 343, 365(1989). The Court must give deference to an agency's interpretation of the law where that interpretation is supported by a rational basis. *Blue Cross & Blue Shield of Kan., Inc. v. Praeger*, 276 Kan. 232 (2003). Finally, this Court may not simply substitute its opinion for that of the agency. *Kansas State Board of Healing Arts v. Foote*, 200 Kan. 447, 451 (1968).

Erroneously Interpreted or Applied the Law

First, Petitioner Caporale alleges the BSRB erred in denying him a psychology license on the basis of failing to meet the requirements of K.S.A. § 74-5310(a)(3) as specifically delineated in K.A.R. 102-1-12(a)(11), 102-1-12(a)(12)(B)(I), 102-1-12(a)(16) and 102-1-12(a)(18). Each determination by the BSRB that Petitioner Caporale failed to meet the requirements of the Administrative Regulations were supported by substantial evidence and on rational grounds. Therefore, because those determinations were supported by evidence and on rational grounds, the BSRB did not unreasonably interpret or apply the law.

Arbitrary and Capricious

Second, Petitioner Caporale alleges the BSRB erred in denying him a psychology license

because the “Agency’s bias against doctoral degrees awarded by non-accredited distance learning programs” . . . “polluted” their judgment. (Petition p.4). Nothing in the record substantiates this claim. In fact, Petitioner Caporale appears to rely solely on language in an Answer filed by the BSRB referring to the doctoral program at Walden University as an “on-line correspondence course.” This does not indicate the BSRB’s decision was arbitrary, capricious, or polluted with bias.

CONCLUSION

After careful review and much consideration of the record, the Court hereby affirms the Kansas Behavioral Sciences Regulatory Board in its decision to deny John Caporale his licensure as a Ph.D. Psychologist in Kansas. The decision was not unreasonable, arbitrary or capricious and therefore, should be given deference. The preceding Memorandum Decision and Order shall serve as the Court’s final entry of judgment, no further journal entry is required.

Dated this 1st day of June 2004.



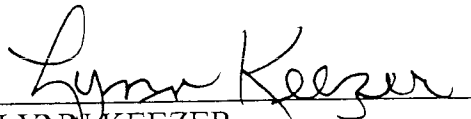
Terry L. Bullock
District Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct file-stamped copy of the above and foregoing **Memorandum Decision and Order** was mailed on the 1st day of June, 2004, by United States mail, postage prepaid thereon, to the following:

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