FILED
FEB 21 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

370

CLARENCE MILES,

Petitioner-Appellee,

vs.

IOWA STATE BOARD OF PUBLIC INSTRUCTION,

Respondent-Appellant.

Filed February 21, 1984

4-19
83-595

Appeal from the Iowa District Court for Pottawattamie County - Leo Connolly, Judge.

Respondent agency appeals from the order of the district court reversing the agency's denial of petitioner's application for a rehearing before the agency. REVERSED.

Thomas J. Miller, Attorney General, and Theresa O'Connell Weeg, Assistant Attorney General, for respondent-appellant.

Lyle A. Rodenburg, Council Bluffs, for petitioner-appellee.

Heard by Oxberger, C.J., and Donielson and Snell, JJ.

DONIELSON, J.

Respondent agency appeals from the order of the district court reversing the agency's denial of petitioner's application for a rehearing before the agency. We reverse.

The Iowa Professional Teaching Practices Commission proposed revocation of the teaching certificate of petitioner, a school principal, based upon evidence presented at a hearing tending to show that he had misappropriated for his own use certain school funds and property, including, among other things, a missing television set. Evidence that a television set that may have been the missing one had been found was not presented to the commission but was presented to respondent board upon petitioner's appeal to it from the commission decision.

The board affirmed the decision to revoke petitioner's certificate in a decision which stated that, due to the new evidence, a strong showing of wrongdoing had not been made with regard to the allegation that petitioner misappropriated the television set. The decision also expressed the hope that the previous withholding of the new information regarding the television set had been unintentional and stated that the intentional withholding of such evidence would clearly be unethical. The board made the following specific findings in support of its decision to revoke petitioner's certificate:

> a) Clarence Miles was all times relevant herein, the holder of a valid Iowa teaching certificate; b) Clarence Miles did, without authority from the District, use District funds for the purchase of items for his personal use in the amount of $671.31 and, before being confronted and making full restitution, repaid the District the sum of only $200.00; c) Clarence Miles did, without authority from the District, use District funds for the purchase of item(s) for his personal use in the amount of $26.13 and did retain for his personal use from the District the cash sum of $18.87; d) Clarence Miles did, without authority from the District, convert to his personal use the sum of $166.00 in the form of an airline ticket refund which rightfully belonged to the District; e) Clarence Miles did, on numerous occasions, lie and falsify public documents in an attempt to conceal activities related to the conversion of District funds to his own use; f) Clarence Miles did improperly attempt to

> implicate students and his personal secretary in his attempt to conceal activities related to the conversion of District funds to his own use; g) however, due to evidence before the Hearing Panel, which was not before the Commission, the Hearing Panel finds that the facts surrounding the issue of the missing television set are inconclusive, and that while suspicions have been raised, a strong showing of wrongdoing on the part of Clarence Miles is absent.

Petitioner then filed an application for rehearing before the board, alleging that its decision was unconscionable, unconstitutional, and irregular due to its alleged reliance on what was characterized as unethical misrepresentations. On judicial review the district court found that the application for rehearing alleged matters which, if true, would have a significant bearing on the revocation decision. Finding that the application for rehearing should have been granted, the court remanded for further hearing. The board brought this appeal.

The only issue in this appeal is whether the trial court erred in reversing the board's decision to deny petitioner's application for rehearing. We do not consider the merits of petitioner's claim that his teaching certificate should not have been revoked. There appears to be no Iowa authority on the question of our standard of review of an agency's decision with regard to a rehearing request. Under federal administrative law, such requests are left to the sound discretion of the agency involved; the courts will not disturb the granting or denial of such a request absent the clearest abuse of that discretion. Mobil Oil Corporation v. Interstate Commerce Commission, 685 F.2d 624, 631 (D.C. Cir. 1982); Duval Corporation v. Donovan, 650 F.2d 1051, 1054 (9th Cir. 1981). See also 73A C.J.S. Public Administrative Law and Procedure § 161 (1983).

We adopt these review principles and hold that, in this case, respondent board did not abuse its discretion in denying petitioner's application for rehearing. The thrust of that application was petitioner's claim that it was unfair of the board to base its decision on allegedly "unethical misrepresentations"; i.e., the fact that the missing television set had been found was knowingly concealed from

the board. First, there was no showing that such knowing concealment occurred; petitioner alleges as much but furnishes no strong supporting evidence to that effect. More important, the board expressly found no wrongdoing on petitioner's part with regard to the television set. Instead, the board revoked petitioner's certificate on the basis of other incidents which were for the most part uncontroverted. In short, the record clearly demonstrates that the board fully considered all of petitioner's allegations regarding the so-called "unethical representations" in reaching its ultimate decision. The board could reasonably conclude that a further hearing would yield no new information or provide any basis for reconsidering its action. Such a conclusion would be well within the board's sound discretion.

In passing, we note that one reason given by the court for granting the rehearing was the fact that the board denied petitioner's request "without explanation or findings of fact and conclusions." It is enough to say that such findings and conclusions are not required when an agency denies a rehearing request. See Iowa Code § 17A.16(2). In fact, under that statute, "an application for rehearing shall be deemed to have been denied unless the agency grants the application within twenty days after its filing." Thus, an agency need not even act on an application for rehearing, much less provide detailed findings and conclusions in support of its granting or denial.

The board did not abuse its discretion in denying petitioner's rehearing request. The district court erred in holding otherwise. The court's order is reversed and the board's decision is reinstated.

REVERSED.