

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13894
X/cb

_____AD3d_____

Submitted - January 16, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
ANITA R. FLORIO
DANIEL D. ANGIOLILLO, JJ.

2006-02762

DECISION & JUDGMENT

In the Matter of Vera Shade, petitioner, v Kevin Mahon, etc., et al., respondents.

(Index No. 2469/06)

James M. Rose, White Plains, N.Y., for petitioner.

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz and Linda M. Trentacoste of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of Kevin Mahon, as Commissioner of the Westchester County Department of Social Services, dated December 29, 2005, which adopted the findings of fact and recommendation of a hearing officer dated December 11, 2005, made after a hearing, finding the petitioner guilty of misconduct and terminating her employment as an eligibility examiner.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The petitioner was charged with misconduct by her employer, the Westchester County Department of Social Services, inter alia, for submitting false information on a recertification application for public assistance. Following a hearing, the petitioner's employment as an eligibility examiner was terminated.

The review of an administrative decision made after an employee disciplinary hearing is limited to a consideration of whether the determination was supported by substantial evidence (*see*

February 13, 2007

Page 1.

MATTER OF SHADE v MAHON

Matter of Pell v Board of Educ., 34 NY2d 222, 231; *Matter of Jones v Mahon*, 11 AD3d 692). Here, the determination of misconduct was supported by substantial evidence including, among other things, the petitioner's testimony that her niece, whom she listed as a member of her New York household and for whom she received public assistance, was living in Virginia.

The disciplinary penalty imposed was not so disproportionate to the misconduct as to be shocking to one's sense of fairness (*see Matter of Featherstone v Franco*, 95 NY2d 550; *cf. Matter of Goudy v Schaffer*, 24 AD3d 764).

The petitioner's remaining contentions are without merit.

MILLER, J.P., SPOLZINO, FLORIO and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court