

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LESLIE PELLOT,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
RICHARD RILEY, Secretary,	:	
Department of Education,	:	
Defendant	:	NO. 97-8116

O R D E R

AND NOW, this 27<sup>th</sup> day of July, 1998, upon consideration of the parties' cross motions for summary judgment, and their respective responses, it is hereby ORDERED that plaintiff's Motion for Summary Judgment is GRANTED and defendant's Motion for Summary Judgment is DENIED. It is further ORDERED that JUDGMENT is hereby ENTERED in favor of plaintiff and against defendant and this case is hereby REMANDED to the United States Department of Education for a discharge of plaintiff's student loans and a refund of any payments she has made, with interest.

This is an appeal from the administrative decision of the Secretary of the Department of Education denying plaintiff a discharge of her federal student loans. Plaintiff is a former student of the nurse assistant training program at American Institute of Design ("AID"), a for-profit trade school in Philadelphia. Under Department of Education regulations, plaintiff was ineligible for financial aid because she did not have a high school diploma or the equivalent thereof, unless AID determined that she had the "ability to benefit" from its

training program. In 1988 AID administered a test to plaintiff, and determined that she did have the ability to benefit from its nurse assistant training program. Plaintiff thus obtained two Federal Family Education Loans ("FFEL") for approximately \$5,000, and completed her studies at AID, which included studies in geriatrics, nursing procedures, anatomy, and physiology. Upon completion of her six-month training program, however, plaintiff apparently experienced difficulty obtaining a job. On June 29, 1995, plaintiff applied for a false certification discharge of her loans, alleging that AID falsely certified her ability to benefit from its nurse assistant training program. In particular, plaintiff claimed that the test administered by AID to determine her ability to benefit failed to comport with Department guidelines and regulations. The Department ultimately denied plaintiff's application for a discharge because it determined that AID properly tested plaintiff's ability to benefit. Plaintiff now appeals that decision to this Court.

Plaintiff seeks review of the Secretary's decision pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq., claiming that the denial of her request for a discharge of her loans based on false certification grounds was arbitrary, capricious, and contrary to law. Under the APA, a court must "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . ."

5 U.S.C. 706(2) (A). "If the court determines that the agency relied on factors Congress did not intend for it to consider, or has failed to consider an important aspect of the problem, then the action should be set aside as arbitrary and capricious." Frisby v. U.S. Department of Housing and Urban Development, 755 F.2d 1052, 1055 (3d Cir. 1985). Furthermore, agencies must abide by their own regulations. See U.S. v. Nixon, 418 U.S. 683, 696 (1974).

Plaintiff brings the instant action for a discharge of her federally-guaranteed student loans pursuant to 20 U.S.C. § 1087(c), claiming that her trade school AID falsely certified her eligibility to receive a loan. That statute provides that "if such student's eligibility to borrow was falsely certified by the eligible institution, then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees) . . . ." 20 U.S.C. § 1087(c)(1). Plaintiff claims that AID falsely certified her "ability to benefit" ("ATB") in that the ATB test which AID administered to her, the Roeder aptitude test, fails to meet with Department of Education standards set forth in 34 C.F.R. § 682.402(e)(13)(ii)(B). Under 34 C.F.R. § 682.402(e)(13)(ii)(B), students are considered to have the ability to benefit from training if they achieved a passing grade on a test which was (1) approved by the Secretary, for periods of enrollment beginning on or after July 1, 1991 or by the accrediting agency for other periods; and (2) administered

substantially in accordance with the requirements for use of the test. Plaintiff challenges the validity of the test used by AID on both grounds. Because the Court finds that the Department's determination--that the ATB test administered to plaintiff was substantially in accordance with the requirements for use of the test--was arbitrary and capricious, the Court does not address plaintiff's other arguments.

Plaintiff claims that AID did not administer the Roeder test to her "substantially in accordance with the requirements for use of the test." The Roeder test is a general aptitude test comprised of six separate tests which test different aptitudes. These tests include clerical routine, personal-social, scientific, general sales, computational, and mechanical aptitude. (A.R. at 198.) AID administered only the clerical routine part of the test to plaintiff, who was applying for the nurse's assistant training program. (A.R. at 37.) The clerical routine section of the Roeder test measures four skills: name checking, number checking, alphabetizing, and spelling. (A.R. at 198.) Although "nurse's assistant" is not specifically listed as an occupation the ability to benefit for which the Roeder test is designed to measure, the Roeder test is designed to measure one's ability to benefit for very similar positions, such as a nurse, dentist's assistant, and doctor's assistant. For such occupations, the scientific and personal-social portions of the Roeder test are used. (A.R. 201-02.) In plaintiff's case,

however, AID administered only the clerical routine portion of the six Roeder tests and failed to test plaintiff on the subjects which the Roeder test intended to be used as a measure of an applicant's ability to benefit from a training program such as one for nurse's assistant.

The defendant argues that the test complies with 34 C.F.R. § 682.402(e)(13)(ii)(B) because the instructions given by the Roeder test explicitly provide that "any one test or a combination of tests may be administered." (A.R. at 198.) When read literally, the manner in which AID tested the plaintiff does not appear to violate the technical requirements of administering the test. However, this forced and unnatural interpretation of "administered substantially in accordance with the requirements for use of the test" contradicts the very reason why the Department of Education promulgated the regulation and contravenes Congress' reason for creating a false certification discharge exception.

The purpose of "ability to benefit" testing, as explicitly demonstrated by the name of the test, is to determine if an applicant can benefit or succeed in the field for which she is testing. Testing an applicant in one aptitude area, then finding that she has the ability to benefit in another aptitude is illogical to say the least. In the instant case, AID administered only the clerical routine test to the plaintiff when according to the Roeder test's own instructions, the ability to

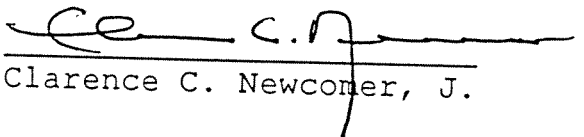
benefit from a program to become a nurse, dentist's assistant, or doctor's assistant, is to be tested using the scientific and personal-social tests. The scenario very much resembles testing a person who desires a job for which math skills are necessary, only in English. In the instant case, plaintiff was unable to hold a job as a nurse's assistant after graduating from her program because she was unable to perform simple tasks such as taking blood pressure. (A.R. 183-84.)

In fact, plaintiff's case appears to be the exact situation for which Congress created the false certification discharge. Congress enacted 20 U.S.C. § 1087(c) as a response to the 1991 Nunn Report, which investigated abuses in federal student aid programs. Congress found that for-profit trade and vocational schools were cutting corners in order to accept as many students as possible and consequently receive more federal loan money. See United States Senate, Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, Abuses in Federal Student Aid Programs, S.Rep. 102-58 ("Victimized by unscrupulous profiteers and their fraudulent schools, students have received neither the training nor the skills they hoped to acquire and, instead, have been left burdened with debts they cannot repay"). 20 U.S.C. § 1087(c)(1) provides such victimized persons with the opportunity to discharge their loans if their school has closed or "if such student's eligibility to borrow under this part was falsely certified by the eligible

institution."

In this instance, plaintiff's ability to benefit was never accurately determined because she was not tested properly, that is the so-called ATB test administered to her was not done so in accordance with the requirements for use of the test. Accordingly, as the Court finds the Department's denial of plaintiff's application for discharge of her loans to be arbitrary and capricious, plaintiff's summary judgment motion is granted and defendant's motion is denied. This case is remanded to the Department of Education for a discharge of plaintiff's student loans and a refund of any payments she has made, with interest.

AND IT IS SO ORDERED.

  
Clarence C. Newcomer, J.