



*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

## **ENTRY ORDER**

SEPTEMBER TERM, 2022

In re Appeal of G.B.*	}	APPEALED FROM:
	}	Human Services Board
	}	CASE NO. H-11/21-705

In the above-entitled cause, the Clerk will enter:

Petitioner G.B. appeals the Human Services Board’s decision upholding the Department for Children and Families’ (DCF) denial of his request to expunge his name from the Vermont Child Protection Registry. We affirm.

DCF is required by law to maintain a “Child Protection Registry” containing “a record of all investigations that have resulted in a substantiated report” of child abuse or neglect. 33 V.S.A. § 4916(a)(1). A person whose name has been entered in the registry may challenge the registry record in two ways: requesting administrative review of the substantiation, *id.* § 4916a, or filing a petition for expungement, *id.* § 4916c(a).

In 1994, petitioner’s sister’s five-year-old niece reported that petitioner—then around twenty-two years old—had pulled down her underwear, licked her vaginal area, inserted his fingers and penis into her vagina, and threatened to hurt her if she told anyone. Following an investigation, DCF substantiated petitioner for sexual abuse of a child and placed his name on the registry in 1995. In 2013, petitioner requested that DCF review his substantiation. Petitioner did not respond to multiple queries to schedule an administrative review conference, so DCF conducted its review without petitioner’s input. DCF concluded that the substantiation was appropriate. Petitioner did not appeal this determination, which then became final. His name thus remained on the registry.

Petitioner sought expungement in 2021. DCF held a Commissioner’s Review meeting in October 2021 to consider petitioner’s request. Petitioner addressed each of the statutory factors under 33 V.S.A. § 4916c(b)(2). In doing so, he explicitly denied having abused his sister’s niece and contended that his sister brainwashed her niece into making false accusations against him in 1994. He also submitted materials in support of his petition, including character-reference letters. In November 2021, a reviewer issued a letter denying the petition on behalf of DCF. See Child Protection Registry and Administrative Review Process, § 3010.04, Code of Vt. Rules 13 172 300 [hereinafter DCF Rules], <https://dcf.vermont.gov/sites/dcf/files/FSD/Rules/3000.pdf> [<https://perma.cc/FMN2-K77A>] (providing that expungement review may be conducted by DCF designee or administrative reviewer).

The reviewer considered petitioner's submittal as well as court records, noting major concerns while also recognizing several factors in petitioner's favor—that a long time had passed since the substantiated incident, that he remained in a stable relationship, and his numerous positive letters of support. The reviewer was particularly troubled by the fact that petitioner continued not to acknowledge his sexual abuse of a young child, never underwent treatment for sexually abusive behaviors, and submitted no documentation from a trained professional, such as a current psychosexual evaluation, to establish his current risk to children. The reviewer also noted petitioner's failure to provide documentation to corroborate his claim that he was never involved with child welfare or law enforcement in the other states where he had lived. Additionally, petitioner failed to follow through on having the substantiation reviewed in 2013, despite claiming it had ruined his life. The reviewer concluded that a reasonable person would not believe petitioner no longer presents a risk to children, and thus denied the petition.

Petitioner appealed that decision to the Human Services Board. The Board held a hearing, where petitioner again denied having sexually abused his sister's niece and claimed he had been falsely accused. Petitioner also argued that the fact that he and his partner recently gained temporary custody over his young nephew demonstrated that DCF does not view him as a risk to children. The Board noted that petitioner was statutorily prohibited from challenging the underlying substantiation at the hearing and that its sole consideration was whether DCF had abused its discretion in denying the petition for expungement. Focusing on petitioner's denial of the incident and failure to provide any professional evaluation to establish his current risk to children, the Board concluded that DCF had not abused its discretion in determining that petitioner failed to show expungement was appropriate. This appeal followed.

Petitioner once again contends that he never sexually abused his sister's niece. He also implies that DCF deemed him a safe caretaker of children because it knew that he had temporary guardianship over his young nephew from November 2020 to June 2021. Petitioner suggests that DCF and the Board denied his petition solely because he did not submit a professional evaluation of his risk to children, and that this was unfair. He additionally emphasizes his numerous positive character-reference letters and that he was never criminally charged for the incident in question. We are unpersuaded by these arguments.

The scope of our review is limited. Petitioner bears the burden to prove he “no longer presents a risk to the safety or well-being of children.” 33 V.S.A. § 4916c(b)(1). DCF must consider all the 33 V.S.A. § 4916c(b)(2) factors. The Board is restricted on appeal to determining whether, on the record, DCF abused its discretion in denying the petition. *Id.* § 4916c(e). The Board is without authority to review the merits of petitioner's substantiation in an expungement appeal. See *id.* (“The person shall be prohibited from challenging his or her substantiation at such hearing, and the sole issue before the Board shall be whether the Commissioner abused his or her discretion in denial of the petition for expungement.”). We, in turn, review the Board's decision under the deferential abuse-of-discretion standard. *K.G. v. Dep't of Soc. & Rehab. Servs.*, 171 Vt. 529, 530 (2000) (mem.). An abuse of discretion may be found if the Board's ruling is based “on an erroneous view of the law or on a clearly erroneous assessment of the evidence.” *In re R.H.*, 2010 VT 95, ¶ 21, 189 Vt. 15 (quotation omitted).

The Board here correctly noted that petitioner was statutorily prohibited from challenging his 1995 substantiation. 33 V.S.A. § 4916c(e). Petitioner's opportunity to challenge the substantiation was through administrative review under 33 V.S.A. § 4916a; he cannot attack it through expungement proceedings. The Board committed no error in declining petitioner's invitation to revisit the evidence underlying DCF's substantiation decision.

Petitioner's remaining arguments relate to the sufficiency and weight of evidence. It is DCF's prerogative to make credibility determinations and evaluate available evidence. See 33 V.S.A. § 4916c(e) (providing that Board must defer to DCF credibility determinations). DCF has discretion to balance the following statutory factors in the first instance: the nature of the substantiation; number of substantiations; amount of time that has elapsed since the original substantiation; circumstances of the substantiation that would indicate a likelihood of reoccurrence; any activities reflecting upon the individual's changed behavior or circumstances, such as therapy, employment, or education; and character references. See *id.* § 4916c(b)(2). DCF can also consider any other information that it deems relevant. *Id.*

The DCF reviewer clearly did not credit petitioner's assertion that DCF knew about, and therefore must have looked favorably on, a New Hampshire court granting petitioner temporary custody over his nephew during portions of 2020 and 2021. The reviewer noted a recent restraining order that prohibited petitioner from contacting his nephew until July 2022, as well as evidence that petitioner had withdrawn his application to become a foster parent for his nephew. In contrast, the reviewer assigned significant weight to petitioner's failure to provide any professional evaluation of his current risk to children, as was the reviewer's prerogative. Contrary to petitioner's suggestion, however, this was not the only evidence supporting denial of his petition. The DCF reviewer also expressed concern that petitioner continued to deny having sexually assaulted his sister's niece despite failing to follow through on appealing the substantiation.

The Board generally upheld DCF's findings and concluded that the lack of a professional evaluation combined with petitioner's continuing denial of the substantiated incident alone were sufficient to deny the expungement petition. The record supported these findings, which in turn provided an ample basis for the Board's ultimate legal conclusion, especially given the serious nature of the incident. See DCF Rules, § 3010.06 ("[DCF] may deny a petition for expungement based solely on the nature of the substantiation or the number of substantiations."). Even if one or more factors weighed in petitioner's favor, that did not preclude the conclusion that petitioner failed to satisfy his burden of proof here. We see no abuse of discretion in the Board's affirmance of DCF's decision.

Affirmed.

BY THE COURT:

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Harold E. Eaton, Jr., Associate Justice

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William D. Cohen, Associate Justice

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Nancy J. Waples, Associate Justice