

IN THE MATTER OF THE TENURE :  
HEARING OF CELESE SEGALL, : COMMISSIONER OF EDUCATION  
SCHOOL DISTRICT OF THE CITY OF : DECISION  
ELIZABETH, UNION COUNTY. :  
\_\_\_\_\_ :

SYNOPSIS

Board certified tenure charges of (Charge 1) chronic and excessive absenteeism, incapacity, incompetency, unbecoming conduct and (Charge 2) abuse of sick leave against respondent teacher.

The ALJ granted the Board's motion for summary decision with respect to Charge 1 since there were no genuine issues of material fact in dispute between the parties and the moving party was entitled to prevail as a matter of law. (*Brill*) The ALJ concluded that the Board gave due consideration to the particular circumstances of respondent's absences, not merely their inordinate number. The ALJ found that the principal was in frequent contact with respondent regarding her 720 days of absence in seven years and the negative impact of those absences on the continuity of instruction. Thus, the Board met the three-prong standard for termination of a tenured employee for excessive absenteeism established by *In re White*. The ALJ dismissed Charge 2 as duplicative of Charge 1 and lacking documentary evidence. The ALJ ordered respondent dismissed from her tenured employment.

The Commissioner concurred with the ALJ's decision to sustain Charge 1 against respondent relative to chronic and excessive absenteeism and to dismiss Charge 2 (abuse of sick leave) for the reasons well-stated in the Initial Decision. Citing *In re White*, among other cases, the Commissioner emphasized that it is well-settled law that excessive absenteeism warrants dismissal of a tenured teacher even when the absences have been excused or caused by legitimate illness. The Commissioner ordered respondent dismissed from her employment and directed a copy of this decision be transmitted to The State Board of Examiners for action as it deems appropriate.

April 17, 2000

IN THE MATTER OF THE TENURE :  
HEARING OF CELESE SEGALL, : COMMISSIONER OF EDUCATION  
SCHOOL DISTRICT OF THE CITY OF : DECISION  
ELIZABETH, UNION COUNTY. :  
\_\_\_\_\_ :

The record and Initial Decision issued by the Office of Administrative Law have been reviewed. Respondent's exceptions and the Board's reply thereto were timely filed pursuant to *N.J.A.C. 1:1-18.4*.

Respondent's exceptions essentially reiterate those arguments set forth in her brief in opposition to summary judgment which were considered by the Administrative Law Judge (ALJ). In addition, respondent avers, *inter alia*, that the ALJ should have held that a material fact issue existed with respect to whether or not respondent was requested to attend an independent medical examination, arguing that the ALJ erroneously held that she had an obligation to ensure that she attended an appointment when the Board made the error of sending the letter to the wrong address. Respondent also avers that the ALJ completely ignored the fact that she was never warned regarding her continued absences and the effect her absences would have on her future employment with the District. *In re Tenure Hearing of White, supra*.

Respondent's exceptions further argue that the ALJ erred in relying on the alleged opinion of a physician who never examined her and in holding that she never gave the Board any information concerning the reasons for her absences. As to this latter point, respondent states:

Ms. Segall received a medical leave of absence from the Board at least through August 1999. In addition, although the record does not contain direct evidence of the notes [respondent] submitted, she clearly must have given the Board medical information because the Board's doctor allegedly viewed some medical information prior to giving his opinion. The Board never stated that [respondent] failed to give the Board information on her medical condition. There is simply no basis in the record on which the ALJ could have made such a finding. (Respondent's Exceptions at 6)

Respondent also maintains that the ALJ erroneously relied on the Board's conclusory assertions about the impact of her absences on students and contends that no actual evidence was submitted to the record regarding this issue. She likewise contends that the ALJ completely ignored the fact that the Board had granted her a medical leave, a fact which she believes cuts against the assertion she was warned about her absenteeism.

In summary, respondent avers that there was absolutely no evidence submitted that her special circumstances were in any way considered by the Board, maintaining that her certification in response to the tenure charges sets forth that her medical condition was misdiagnosed and has now been correctly diagnosed. Respondent urges that she is on the road to recovery and will soon be able to resume her duties fully; thus, her special circumstances dictate that she should not be terminated and should at least be granted a hearing on the tenure charges.

Upon careful and independent review of the record in this matter, including the parties' exceptions, the Commissioner concurs with and adopts as his own the recommended decision of the Administrative Law Judge to sustain the first tenure charge against respondent relative to chronic and excessive absenteeism and to dismiss the second charge of abuse of sick leave for the reasons well-stated in the Initial Decision.

In so holding, the Commissioner concludes that the ALJ properly applied the standard for granting summary decision as set forth by the New Jersey Supreme Court in *Brill*,

*supra*, and, therefore, adopts the ALJ's conclusion that no genuine issues of material fact exist in this matter which would require a plenary hearing. As correctly stated by the ALJ:

The *Brill* standard contemplates that the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary standard to be applied to the case or issue if it went to trial. "To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed 'worthless' and 'will serve no useful purpose.'" (Initial Decision at 4, quoting *Brill, supra*, at 541)

Moreover, the Commissioner is in full agreement with the ALJ's conclusion that:

[T]his case is not *materially* about an unsuccessful attempt (for whatever reason) by the Board of education to have respondent examined by its physician; nor is it *materially* about a current attempt to medically justify previously unexplained absences. The substantive issue of this case consists of the chronic and excessive nature of respondent's absenteeism as well as its equivalence to incapacity and unbecoming conduct. Consequently, neither the conduct of an examination by the Board's physician nor the supplying of current medical information (to justify respondent's absences) would create any legitimate inferences in favor of the non-moving party. See, *Rule* 4:46-2. Succinctly put, no permissible inferences can be drawn from the competent evidential materials presented which would inure to respondent's benefit or allow a rational fact-finder to conclude that Ms. Segall was not chronically and excessively absent from her job during the seven years in question. (emphasis in text) (Initial Decision at 6-7)

The Commissioner further determines that the record supports the findings of fact set forth by the ALJ on page 5 of the Initial Decision and that the ALJ's legal analysis properly applied pertinent law relative to a teacher's chronic and excessive absenteeism. *In re White, supra*; *State-Operated School District of Jersey City v. Pellecchio, supra*; *In re Kacprowicz, supra*. As correctly noted by the ALJ, it is well-settled law that excessive absenteeism warrants dismissal of a tenured teacher even when the absences have been excused or caused by legitimate illness.

Accordingly, for the reasons expressed in the Initial Decision, respondent is hereby dismissed from her tenured employment with the Board. A copy of this decision will be transmitted to the State Board of Examiners for action as it deems appropriate.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: April 17, 2000

Date of Mailing: April 17, 2000

---

\* This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.