

ANNE MARIE ABERCROMBIE,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE CITY OF	:	DECISION
ELIZABETH, UNION COUNTY,	:	
	:	
RESPONDENT.	:	
	:	

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions were filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4. The Board did not file reply exceptions.

Petitioner’s exceptions reiterate her argument advanced below, *i.e.*, the letter she received from the district on June 7, 1999 only denied her workers compensation benefits and did not address or operate to deny sick leave benefits, pursuant to *N.J.S.A.* 18A:30-2.1, which she, at that point in time, had never requested. Petitioner, therefore, urges reversal of the Initial Decision.

Upon his full and independent review, the Commissioner concurs with the Administrative Law Judge (ALJ) that, pursuant to *Verneret v. BOE Elizabeth*, 95 *N.J.A.R.* 2d (EDU) 134, petitioner’s claim for benefits under *N.J.S.A.* 18A:30-2.1 is untimely since it was not filed within the 90 days prescribed by *N.J.A.C.* 6A:3-1.3(d)(1). The Commissioner further finds that the record before him reveals no unusual or compelling circumstance which would warrant the relaxation of the 90-day rule, and, therefore, as concluded by the ALJ, the instant petition of appeal must be dismissed.

It is noted that in *Verneret* the State Board was clear in its holding that, even if an alleged work-related injury is also the subject of a workers’ compensation action, an individual

seeking to claim benefits under *N.J.S.A.* 18A:30-2.1 must file a petition before the Commissioner of Education within 90 days of the district board's action that has the effect of denying benefits to petitioner. It further held that strict adherence to this regulatory timeline was required even if the Commissioner chose to defer exercise of his jurisdiction to hear the school law claim until the conclusion of the workers' compensation case. Here, the action of respondent which operated to trigger the running of the 90-day timeline of *N.J.A.C.* 6A:3-1.3(d)(1) was when petitioner received notice, in June 1999, that her absences on the dates at issue would be treated as ones due to personal illness, rather than work-related illness, and these days were deducted from petitioner's accumulated sick leave bank. Contrary to the position espoused by petitioner, the fact that she did not specifically apply to the Board for benefits pursuant to *N.J.S.A.* 18A:30-2.1 in 1999 is of no moment. The very nature of the Board's determination and action at this time served to advise her unequivocally that any claim she might have based on an allegation of a work-related injury was being denied. Consequently, there can be no question that the instant petition, filed in April 2004, some five years after petitioner's receipt of the June 7, 1999 notice from the Board, was time-barred pursuant to *N.J.A.C.* 6A:3-1.3(d)(1).

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons articulated therein, as clarified above, and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: January 20, 2005

Date of Mailing: January 20, 2005

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\* This decision 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.* 6A:4-1.1 *et seq.*