

#362-08

AGENCY DKT. NO. 228-7/08

ALIZAH CHOMSKY, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWN OF WEST NEW YORK, :
 HUDSON COUNTY, :
 :
 RESPONDENT. :

On June 5, 2008 petitioner filed an appeal asking the Commissioner to order respondent to “restore” eleven sick days to her accumulated leave time for an absence which she contends was due to a work related injury. The Office of Controversies and Disputes of the Department of Education (C&D) advised petitioner’s counsel that the Commissioner does not accept petitions invoking *N.J.S.A.* 18A:30-2.1 until a determination has been made by the Workers’ Compensation Court (WC Court) that the subject injury was incurred in the line of duty, or a settlement has been reached in the WC Court by the parties without a determination of work-related causation, or a determination has been made that the claim constitutes an exception to the rule that the Commissioner defer jurisdiction until the WC Court makes its findings. *See N.J.A.C.* 6A:3-1.3(c).

By letter filed on July 23, 2008, petitioner – through her attorney – challenged C&D’s advice, stating that she does “not believe anything in the Agency’s enabling legislation requires an employee to file a workers compensation claim before the Commissioner can

exercise jurisdiction over a claim under *N.J.S.A. 18A:30-2.1*.” C&D docketed the petition and invited respondent to reply to petitioner’s contentions concerning the jurisdictional issue.¹

The Commissioner has considered petitioner’s opinion, and rejects it. For decades it has been the rule in New Jersey that the Commissioner accept the determination of the Workers’ Compensation Court as to whether an injury is classifiable as work related:

[A]s the express function of *N.J.S.A. 18A:30-2.1* is to complement workers' compensation benefits for a strictly limited time period, a proceeding pursuant to that statute may not be utilized to supplant the function of the compensation court. By its terms, this statute contemplates a prior determination of a compensable injury by the compensation court before consideration by the commissioner of the eligibility of the injured employee for the additional benefits provided by the statute.

Forgash v. Lower Camden County School, 208 *N.J. Super.* 461, 466-67 (App. Div. 1985).

See, also, Jaques Verneret v. Board of Education of the City of Elizabeth, 95 *N.J.A.R.2d* (EDU) 134, 135.

Accordingly, the petition is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 8, 2008

Date of Mailing: September 8, 2008

¹ No reply was forthcoming from respondent.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.