

#313-11

IN THE MATTER OF THE TENURE : COMMISSIONER OF EDUCATION
HEARING OF CHRISTINE GILLESPIE,
SCHOOL DISTRICT OF THE CITY : DECISION
OF NEWARK, ESSEX COUNTY.
_____:

SYNOPSIS

In 2003, petitioning Board filed tenure charges of incapacity and excessive absenteeism against respondent, a tenured teacher, and sought to terminate her employment with the district. This matter has been prosecuted parallel to a worker's compensation case, the resolution of which respondent contends is a necessary prerequisite to the disposition of the instant tenure charges.

On or about June 20, 2011, the Office of Administrative Law (OAL) forwarded a notice to the Commissioner, stating that respondent had not appeared at a hearing scheduled for June 10, 2011.

After review of the record and recent correspondence from respondent and petitioner, the Commissioner remanded the matter to the OAL for further proceedings. In so doing, the Commissioner directed the parties to establish a protocol for communications, and found that the facts surrounding respondent's absence at the June 10, 2011 hearing do not support the severe result of summary decision by default.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

August 3, 2011

IN THE MATTER OF THE TENURE : COMMISSIONER OF EDUCATION
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SCHOOL DISTRICT OF THE CITY : DECISION
OF NEWARK, ESSEX COUNTY.
_____ :

This tenure matter – which dates back to 2003 – has been prosecuted parallel to a workers’ compensation case, the resolution of which respondent contends is a necessary prerequisite to disposition of the instant tenure charges. Most recently, on April 27, 2011, the Administrative Law Judge (ALJ) in charge of the case denied cross motions, *i.e.*, petitioner’s motion for summary disposition and respondent’s motion to dismiss the tenure charges.

On or about June 20, 2011, the Commissioner received a notice from the Office of Administrative Law (OAL) stating that respondent had not appeared at a hearing that had been scheduled for June 10, 2011. On June 30, 2011, the Commissioner received a letter from respondent advising 1) that she had received only nine days’ notice for said hearing, 2) that she had written both to the ALJ assigned to the case and to the OAL chief ALJ explaining that nine days’ notice was insufficient time for her to subpoena witnesses and prepare for the hearing, and 3) that she had contacted the chief ALJ’s clerk, who had advised her that hearing notices are generally dispatched several weeks prior to the hearing dates.¹ Respondent further stated that the OAL did not respond to her letters, that she interpreted the silence as agreement to her implied request for a new hearing date, and that the OAL should “correct its report that [she] failed to appear at a scheduled hearing on June 10, 2011.”

¹ In the record, there is also a letter dated May, 16, 2011, in which respondent advised the OAL that she had received an empty envelope from it.

Annexed to respondent's June 30, 2011 letter to the Commissioner was a letter addressed to the ALJs referring to her prior correspondence about insufficient notice and, *inter alia*, challenging the OAL's action in processing the case as a "Failure to Appear." Both the letter to the Commissioner and the letter to the ALJs were copied to opposing counsel.

Petitioner answered respondent's filing by way of a letter, dated and received by the Commissioner on July 8, 2011. In the letter, petitioner reported that it had received notice of the June 10, 2011 hearing on May 3, 2011 – four weeks before the notice was received by respondent. When petitioner's counsel received respondent's correspondence revealing that she had not received the hearing notice until June 1, 2011, counsel asked the OAL for direction. It was counsel's understanding that the OAL would contact respondent by phone to set up a teleconference. It appears, however, that no teleconference occurred because the OAL's efforts to reach respondent by telephone were unsuccessful.

In its July 8, 2011 letter, petitioner's counsel also recited procedural history – which the Commissioner does not view as germane to the resolution of the instant issue – and urged that the Commissioner issue a decision on the tenure charges based only upon the record to date. The Commissioner declines.

Respondent submitted another letter to the Commissioner, filed on July 14, 2011, disputing petitioner's characterization of the procedural history in this matter and, *inter alia*, stating that the reason the OAL could not reach her by telephone was that it erroneously dialed her fax number. On July 22, 2011, she filed another letter advising that her workers compensation claim had been reinstated, and asking for back wages.

Taking all of the foregoing into consideration, the Commissioner is constrained to remand this case to the OAL. At the outset, the Commissioner perceives a need for the ALJ and

the parties to establish a protocol for communications. Respondent shall provide the OAL and petitioner with specific contact information within 10 days of the mailing of this order, the OAL and petitioner shall use only that contact information to communicate with respondent, and respondent will not be excused if she fails to reply to notices, pleadings and communications sent to the phone numbers and addresses that she provides.

As regards the progress of this tenure controversy, the Commissioner does not find that the facts surrounding respondent's absence at the June 10, 2011 hearing support the severe result of summary disposition by default. While the procedural history in the present matter has generally been protracted and perhaps arduous, the Commissioner nonetheless finds that respondent's June 3, 2011 letter, together with the May 16, 2011 letter advising that she had received an empty envelope from the OAL, warranted an express response. When attempts to reach respondent by telephone were unsuccessful, written correspondence should have preceded the abandonment of the case

The matter is thus remanded to the OAL for further proceedings.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 3, 2011

Date of Mailing: August 4, 2011

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1)