

#220-11 (OAL Decision: Not yet available online)

BELGICA POLANCO-GOMEZ, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF ENGLEWOOD CLIFFS, BERGEN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

On January 28, 2011, the petitioner – a tenured secretary formerly employed by the Board – filed an appeal charging, *inter alia*, that the respondent Board’s abolishment – by resolution dated October 4, 2010 – of petitioner’s position for reasons of economy and efficiency violated the law, and that petitioner was entitled to a full-time secretarial/clerical position held by non-tenured and/or less senior tenured employees. The Board filed a motion for summary decision, and sought dismissal of the petition for failure to comply with the 90-day requirement of *N.J.A.C. 6A:3-1.3(i)*.

The ALJ found that: there are no material facts in dispute, and the matter is ripe for summary judgment; the 90-day period for filing an appeal begins once notice of the final order or ruling is given, which in this case occurred on October 4, 2010; petitioner’s argument that the 90-day rule should be relaxed is unconvincing, and she has presented no evidence to show that extraordinary relief is warranted in this case. Accordingly, the ALJ granted summary decision to the respondent Board, and dismissed the petition.

Upon full consideration of the record and Initial Decision of the OAL – and finding the petitioner’s exceptions without merit – the Commissioner concurred with the ALJ for the reasons detailed in the Initial Decision, and dismissed the petition.

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.

June 15, 2011

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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 and the Board’s reply thereto – filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.

Petitioner’s exceptions do not dispute the fact that she failed to file the instant petition within the 90-days mandated by *N.J.A.C.* 6A:3-1.3(i). Rather, she again argues, as she did below, that the exigent circumstances existing in this matter – which included the need to find a new position in order to provide medical insurance coverage for her ill child and the lack of any immediate assistance to locate an attorney who could pursue this matter on her behalf – fully justify the Commissioner’s relaxation of the 90-day rule in this case. She, therefore, seeks such relaxation and a remand of this matter for a decision on the merits of her claim. (Petitioner’s Exceptions at 1-8)

In reply, the Board points out that petitioner was in no imminent danger of losing health benefits as she was fully aware that she was entitled to remain on the Board’s health care plan through COBRA for at least eighteen months following her termination. Moreover, the Board attaches to its reply exceptions – as it had done to its reply brief in support of its Motion to Dismiss below – a copy of the November 23, 2010 Meeting Minutes of the East Rutherford Board of Education (petitioner’s current employer). These minutes show that on that date the East Rutherford Board voted to hire petitioner as a

full-time employee at a salary considerably higher than what she earned in Englewood Cliffs. Consequently, notwithstanding petitioner's urging that her search for employment prevented her from seeking an attorney and filing a timely appeal in this matter, as of November 23, 2010, with thirty-five days remaining to appeal her termination, petitioner had already secured new employment with health benefits. (Board's Reply Exceptions at 1-2)

Upon his considered review – and finding petitioner's exceptions without merit – the Commissioner concurs with the Administrative Law Judge (ALJ) that the instant petition is appropriately dismissed because it was filed outside the 90-day limitation period set forth in *N.J.A.C. 6A:3-1.3(i)*. The Commissioner, likewise, fully agrees – for the reasons discussed by the ALJ on pages 6-7 of her decision – that petitioner has failed to set forth a bona fide legal or factual basis for waiving the timely filing requirement.

Accordingly, the recommended decision of the OAL is adopted for the reasons stated therein. Summary decision is granted to the Board and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 15, 2011

Date of Mailing: June 15, 2011

* 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*).