

#164-11 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :  
HEARING OF DANNY CASTRO, : COMMISSIONER OF EDUCATION  
SCHOOL DISTRICT OF THE CITY : DECISION  
OF UNION, HUDSON COUNTY. :

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### SYNOPSIS

The petitioning Board certified charges of excessive absenteeism and conduct unbecoming against respondent – a tenured attendance officer – for a disproportionate number of absences spanning the period from the 2001-2002 to the 2009-2010 school year, and for insurance fraud stemming from an incident in which respondent’s medical insurance was billed for treatment of a person posing as respondent’s estranged wife. The respondent argued that he was not excessively absent, and that his major absences were a paid leave that resulted from respondent’s two arrests – which were later dismissed – and an unpaid leave to handle family problems; additionally, he argued that the insurance fraud charge was based on hearsay, and the Board has no competent evidence to prove the charge. The Board sought removal of respondent from his tenured position.

The ALJ found, *inter alia*, that: the respondent’s testimony at hearing contradicted statements he had previously made, and was not credible; the testimony of the Board’s superintendent was credible and forthright; as an attendance officer, respondent’s frequent absences set a poor role model for student attendance; the insurance fraud charges were not based on hearsay evidence, as respondent – by his own admission – was at the doctor’s office on March 2, 2010 when a woman posing as respondent’s wife received treatment charged to respondent’s medical insurance; and the Board carried its burden to prove that respondent is guilty of excessive absenteeism and unbecoming conduct. Accordingly, the ALJ ordered that respondent be dismissed from his tenured employment.

Upon independent review of the record, the Commissioner concurred with the ALJ’s findings, noting that the conduct proven in this proceeding amply warrants respondent’s dismissal from tenured employment. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the respondent was dismissed from his tenured position.

<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>
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May 3, 2011

OAL DKT. NO. EDU 12493-10  
AGENCY DKT NO. 613-10/10

IN THE MATTER OF THE TENURE :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the respondent and the Board of Education's (Board) reply thereto.<sup>1</sup>

In his exceptions, the respondent argues that the Administrative Law Judge (ALJ) erroneously sustained the Board's charges of excessive absenteeism and unbecoming conduct, and that the taking of respondent's tenure is too severe a penalty. The respondent maintains that the ALJ improperly calculated the respondent's absences between 2001 and 2009, and that the time that the respondent was absent because he was suspended should not count towards the analysis. The respondent also argues that there was no testimony that his absences adversely affected the delivery of services by the school system. With respect to the allegation of unbecoming conduct based on the alleged insurance fraud, the respondent contends that the ALJ improperly arrived at conclusions not supported by any facts presented at the hearing. Finally, the respondent asserts in his exceptions that the Board's case relating to the fraud allegations was based entirely on hearsay evidence.

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<sup>1</sup> The record contains no transcripts from the hearings conducted at the OAL on January 25- 26, 2011, and March 2, 2011.

In reply, the Board urges the adoption of the Initial Decision, asserting that the respondent's exceptions essentially reiterate the arguments made by the respondent throughout the proceedings. The Board maintains that the respondent's argument that his suspensions should not be considered towards the calculation of absences because the board prevented him from working is disingenuous. The Board emphasized the fact that the respondent was suspended from work because he was criminally charged with serious offenses, including stabbing someone, impersonating a police officer and drug offenses. Additionally the Board points out that the respondent was an attendance officer, and he could not properly investigate truancy when he himself was continuously absent from work. In reply, the Board also contends that the ALJ properly relied on the direct and circumstantial evidence to support her conclusion that the Board proved the respondent committed insurance fraud. The Board stresses that in addition to other evidence, the ALJ relied on the respondent's own admissions and responses to interrogatories, as well as respondent's incredible hearing testimony to support her conclusions.

In the absence of any basis in the record on which to dispute the fact-finding and credibility determinations of the ALJ pursuant to *N.J.S.A. 52:14B-10(c)*, *In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987), the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of excessive absenteeism and unbecoming conduct. The Commissioner finds respondent's exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account by her in weighing the testimony and evidence, and in concluding that the record overall supported the Board's charges. The Commissioner also finds no basis in the record to reject either the ALJ's recitations of testimony or her determinations of witness credibility. The ALJ found that the respondent's "testimony could only be characterized as incredible." On the other hand, the ALJ found that the

superintendent was “credible and forthright in his responses and showed no personal animus towards the respondent.” The ALJ had the opportunity to assess the credibility of the witnesses who appeared before her and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner’s review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. [N.J.S.A. 52:14B-10(c)].

Moreover, the Commissioner fully concurs with the ALJ’s assessment of respondent’s conduct in light of applicable law and prior decisional precedent, and agrees that the conduct proven in this proceeding amply warrants respondent’s dismissal from tenured employment.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is hereby dismissed from his tenured position with the Union City School District.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 2, 2011

Date of Mailing: May 3, 2011

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<sup>2</sup> 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)